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No. 324

In the Supreme Court of the United States

OCTOBER TERM, 1936

THE VIRGINIAN RAILWAY COMPANY, PETITIONER

v.

SYSTEM FEDERATION NO. 40, RAILWAY EMPLOYEES DEPARTMENT OF AMERICAN FEDERATION OF LABOR, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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OPINIONS BELOW

The opinion of the District Court for the Eastern District of Virginia (R. 254–279) is reported in 11 F. Supp. 621. The opinion of the United States Circuit Court of Appeals for the Fourth Circuit (R. 311–339) is reported in 84 F. (2d) 641.

JURISDICTION

The decree of the Circuit Court of Appeals (R. 340) was entered on June 18, 1936. The petition for certiorari was filed August 31, 1936, and

granted on October 12, 1936. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

The following questions will be discussed in this brief:

I. Is the application of the Railway Labor Act, as amended on June 21, 1934, to back-shop workers on the Virginian Railway in violation of the commerce clause?

II. Is the Railway Labor Act invalid *in toto* on the grounds: (1) that it applies to some employees not subject to the commerce power, and (2) that it is inseparable?

III. Does the Railway Labor Act as amended impose a legally enforceable obligation on carriers to "treat with" the representatives selected by the majority of the employees in a craft or class as the representatives of the craft or class?

IV. If so, is the requirement in violation of the due process clause of the Fifth Amendment?

V. Does the Norris-La Guardia Act (47 Stat. 70, U. S. C., Tit. 29, §§ 101–115) prohibit the granting of the injunction issued by the courts below?

The following questions presented by the case are not considered in this brief but are left to the consideration of counsel for the respective parties:

VI. May the National Mediation Board, in elections held to determine the representation of a

craft or class under Section 2, Paragraph Ninth, of the Railway Labor Act, as amended, certify as the representative of a craft the organization receiving the majority of the votes cast but not a majority of all those qualified to vote, where a majority of the eligible voters participate in the election?

VII. Whether the certification of the National Mediation Board contains adequate findings.

STATUTES INVOLVED

The provisions of the Railway Labor Act of May 20, 1926, c. 347, 44 Stat. 577, as amended by the Act of June 21, 1934, c. 691, 48 Stat. 1185, U. S. C. Tit. 45, §§ 151–163, are set forth *in toto* in the Appendix, the changes in the Act of 1926 made by the 1934 amendments being indicated.

STATEMENT

The Government will not undertake to formulate any detailed statement of the facts such as is contained in the briefs filed by petitioner and respondent, but will refer the Court to the statement of facts in the opinion of the District Court (R. 254–270).

This suit was instituted by the respondents, a labor organization representing the shop craft employees on the Virginian Railway, and various individual officers and members thereof, (1) to compel the petitioner to treat with it, and (2) to restrain petitioner from interfering with or influencing, intimidating or coercing its shop craft em-

ployees in their free choice of representatives, and from promoting, fostering or encouraging certain so-called company unions or entering into agreements with such unions with respect to such employees. (R. 29–30.)

The mechanical department employees of the petitioner had since 1922 been represented by the Mechanical Department Association of the Virginian Railway, an organization formed and dominated by the carrier. (R. 255, 256, 278, 281.) The respondent, System Federation No. 40, an organization affiliated with the American Federation of Labor and composed of the six shop crafts on the Virginian Railway, claimed in 1934 that the majority of the mechanical department employees of the petitioner desired to be represented by it. (R. 256.) The Association and the Railway disputed this claim. (R. 31, 256, 257.) Respondent thereupon asked the National Mediation Board to conduct an election by secret ballot to determine the choice of representatives. (R. 257.)

In an election held by the Mediation Board, pursuant to the provisions of Paragraph Ninth of Section 2 of the Act, among the six crafts of employees in the mechanical department of petitioner, the respondent received a majority of the votes cast in each of the six crafts, and the Mechanical Department Association a small minority. (R 263.) In four of the six crafts—the sheet metal workers, the machinists, the electrical workers, and the

boiler makers—a majority of all the eligible voters favored the respondent Federation. (R. 263.) A majority of the craft of blacksmiths participated in the election, but the Federation received less than a majority of the total eligible vote.[1] Less than a majority of those qualified to vote in the craft of carmen and coach cleaners participated in the election.[2] The National Mediation Board certified to the petitioner that System Federation No. 40 was the duly designated representative of the six shop crafts in the Mechanical Department. (R. 13.) Respondent then demanded that the petitioner treat with it as the representative of the Mechanical Department employees for the purposes of the Act. The petitioner refused to do so. (R. 143, 265.) Thereupon respondent instituted this suit to compel petitioner to treat with it.

In their bill respondents also alleged that petitioner was interfering with and influencing its employees' choice of representatives by encouraging them to join the Association, as well as the Independent Shop Craft Association, another union subsequently organized by petitioner (R. 8–11, 18–25), and discouraging affiliation with the respondent, in violation of Paragraphs Third and Fourth of

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[1] The Federation received 22 and the Association 8 out of 46 eligible votes. (R. 263.)

[2] The Federation received 98 and the Association 20 out of 266 eligible votes. (R. 263.)

Section 2. The respondents asked that petitioner be enjoined from continuing its efforts to force its employees to join company unions rather than the Federation. (R. 29.)

After a trial, the District Court found as fact that petitioner had refused to treat with respondents, and that the charges of interference, influence and coercion were well founded. (R. 281–282, 277–278, 265–266.) The court also held that the Railway Labor Act was constitutional as applied to the back-shop employees of petitioner (R. 269–274), that the certification was valid as to the five crafts in which a majority of the qualified voters participated in the election (but not as to the craft of carmen) (R. 266–267), that the Act authorized the granting of injunctive relief (R. 274–276), and that the provisions of the Norris-LaGuardia Act relating to the issuance of injunctions in labor disputes had been complied with (R. 276–278). The court granted the relief prayed for by respondent, except that it did not require petitioner to treat with the representatives of the carmen. (R. 280–283.) Respondents have not appealed from the ruling as to the carmen.

On appeal, the Circuit Court of Appeals carefully reviewed all of the questions passed upon by the District Court (except the ruling as to the carmen) and affirmed the decision below.

Other facts necessarily involved in the determination of the issues discussed in this brief will be stated in the argument.

SUMMARY OF ARGUMENT

I

The Railway Labor Act may constitutionally be applied to cover persons employed in the back-shops of a carrier even though such persons are not themselves engaged *in* interstate commerce. This Court has already upheld the validity of the Railway Labor Act as applied to clerks, whose work is obviously intrastate in nature. *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548. The purpose of the Act was to prevent strikes which threatened the service of the necessary agencies of interstate transportation. Labor disputes between carriers and their shop employees would both endanger the safety of interstate transportation and directly obstruct its movement. Moreover, a dispute between a carrier and its back-shop employees would necessarily be communicated to employees engaged in interstate commerce, inasmuch as the mechanical department of a carrier, which includes both back-shop employees and those engaged in making running repairs, is operated and organized as a unit. The principle of *The Employers Liability Cases,* 207 U. S. 463, does not apply here; although interstate commerce might not be affected at all by the rule of liability applicable to shopmen's injuries, it would be directly obstructed if shopmen ceased to work and if railroad equipment was not repaired.

II

Petitioner claims that the statute is entirely invalid, because it applies to some employees engaged in purely intrastate activity. It is doubtful whether there are any railroad employees whose work is not essential to the effective functioning of the transportation system or as to whom it might not be said that labor disputes between them and their employees would interfere with interstate commerce. But if it be assumed that there is a small proportion of employees as to whom the Act could not constitutionally be applied, it is clear that Congress would have intended the Act to stand as to the remainder. That is, Congress would have preferred to have the Act operate so as to prevent a large proportion of railway labor disputes rather than to have the Act declared entirely void. The *Texas & New Orleans* case is, of course, inconsistent with the view that the statute is completely invalid.

III

The decree requires both that the petitioner treat with the respondent Federation (hereafter referred to as the affirmative obligation), and that petitioner refrain from entering into collective labor agreements with anyone but the respondent (hereafter referred to as the negative obligation). It does not require petitioner to enter into any contract with the respondent, establish a closed shop, in any way interfere with the exercise of petition-

er's right to select or discharge its employees, or prevent individual or minority groups from presenting grievances to the management. Such a decree is authorized by Subdivisions First, Second, Third, Fourth, and Ninth of Section 2 of the statute.

Petitioner does not challenge the enforceability or legality of Subdivisions Third and Fourth of Section 2, which together form one of the alternative statutory bases for the second or negative paragraph of the decree. See pages 11–12, *infra*. But petitioner claims that the affirmative duty imposed upon carriers to treat with the representatives of their employees is not enforceable. A review of the history and context of these sections, however, shows that Congress intended the obligations imposed by Paragraphs First, Second and Ninth of Section 2 to be both mandatory and enforceable. The provisions are phrased in mandatory language. They are ancillary to and inextricably intertwined with other statutory provisions which are admittedly legally enforceable. The binding character of the obligation imposed by these paragraphs will clearly appear from examples of how they fit into the statutory scheme. They relate to the use of the conference procedure for settling disputes. By Section 2, Eighth of the Act, which is criminally enforceable, carriers are required to post notices stating that they will comply with the statutory procedure in settling labor

disputes. Section 2, Seventh and Section 6, which are also criminally enforceable, require that conferences be held in advance of any change in rates of pay, rules, or working conditions. These provisions make it plain that the obligation to hold conferences was not intended to be precatory.

Moreover, as the legislative history shows, the purpose of the 1934 amendments to the Railway Labor Act was to strengthen the original 1926 Act and make it more enforceable. The 1934 amendments were enacted partly because some carriers had refused to deal with representatives chosen by a majority of their employees. Such carriers insisted upon recognizing other organizations with which they preferred to treat, even though such organizations did not represent a majority of the employees. Section 2, Ninth, also added in 1934, was designed to meet this particular evil through the medium of a secret election and a requirement that the carrier treat with the representative chosen.

Enforcement of Paragraphs First, Second, and Ninth of Section 2 is entirely consistent with and *in fact essential* to the success of the statutory plan for amicable settlement of disputes through conferences between representatives of the parties. The purpose and effect of these provisions is to require carriers and their employees to use the machinery established by the Act for the attainment of industrial peace; it does not change the basic principles of the Act, which recognize that

peace can be achieved only through conferences and voluntary agreements.

Petitioner suggests that the affirmative obligation that a carrier treat with the representative of its employees is not subject to enforcement in a court of equity. But there is no inherent difficulty in the way of equitable enforcement of the statutory requirement that carriers confer with the representatives of their employees. As has been pointed out, the statute does not attempt to compel agreement, and the decree only requires the carrier to meet representatives of employees in conference.

The negative requirement in the decree that petitioner refrain from entering into collective labor agreements except with respondent may be regarded as one way in which a court of equity enforces the affirmative statutory obligation. Or it may rest upon the negative statutory obligations included in Section 2, Second and Ninth. These paragraphs and complementary parts of the statute not only express an affirmative duty to treat with duly designated representatives of employees but also imply a negative duty not to treat with any one else as to rates of pay, rules, or working conditions. Thus the negative part of the decree may be in execution of these paragraphs. Or it may be in execution of Paragraphs Third and Fourth, which are unquestionably enforceable. *Texas & New Orleans R. Co.* v. *Brotherhood of*

Railway Clerks, supra. Paragraphs Third and Fourth prohibit a carrier from interfering with or influencing its employees in their selection of representatives. Petitioner was attempting to force company unions upon its employees, and the making of agreements with such organizations, which did not in fact represent the majority of the Mechanical Department employees, constituted a method of influencing and interfering with the employees in the free choice of representatives. The Court below was fully warranted in prohibiting this practice, in order to protect the employees' right to choose their own representatives.

IV

The affirmative obligation that petitioner confer with the representatives of its employees and attempt to settle disputes amicably in conference can not be regarded as depriving petitioner of liberty or property in violation of the Fifth Amendment since the obligation is merely to confer, not necessarily to contract. Moreover, if such a requirement were deemed to interfere with petitioner's property or contract rights, it would be entirely reasonable as a necessary and important part of the machinery for the prevention of railway labor disputes. Every portion of the statutory plan ultimately depends for its success on the willingness of carriers to confer with the representatives of their employees.

The negative obligation does not in fact deprive carriers of liberty of contract, inasmuch as the

practice of carriers is not to contract with individual employees or with minorities. They establish, either through unilateral announcement, or a bilateral agreement with one organization representing the employees in a craft or class, the rates of pay, rules and working conditions applicable to the class or craft. It would be extremely impracticable for a carrier to have minority groups of employees working under different rules than the majority, and neither petitioner nor other carriers exercise their purely theoretical privilege of contracting with more than one representative of a single class of employees.

In any event, the prohibition against contracts with minority groups is reasonable and necessary if railway labor disputes are to be prevented. The effectiveness of the machinery of the Act is posited upon agreement between representatives of employers and employees, and cannot be achieved by conflicting conferences between a carrier and numerous representatives of individual employees or minority groups working at cross purposes. Any attempt by a carrier to maintain two or more contracts applying to persons doing the same work, with standards necessarily discriminating against one group or another, would result in discord and dissatisfaction and make labor disputes inevitable.

In recognizing the power of a carrier to join with the representatives selected by a majority of the craft in making a purely civil contract (to which no penal sanctions are attached) which

covers the whole craft, the Railway Labor Act does not involve any delegation of legislative power. The doctrine of *Carter* v. *Carter Coal Company*, 298 U. S. 238, is therefore inapplicable.

V

Petitioner's claim that the injunction below violates Sections 4 (e), 6, 7 (a) and 9 of the Norris-LaGuardia Anti-Injunction Act is obviously unsupported by the language of the sections to which petitioner refers. Moreover, if there were an inconsistency, the Railway Labor Act, which was enacted subsequent to the Norris-LaGuardia Act and which deals with the specific problem at bar, would, under familiar canons of statutory construction, prevail.

ARGUMENT

I

THE APPLICATION OF THE RAILWAY LABOR ACT TO BACK-SHOP EMPLOYEES IS WITHIN THE COMMERCE POWER

The Mechanical Department employees on the Virginian and other railways are those engaged in repairing cars and locomotives. Such repair work consists of the light or "running" repairs, made (generally in roundhouses or yards) without withdrawing the equipment from service, and the heavy or "classified" repairs made in the back shops. To make classified repairs on the Virginian, the cars and engines are withdrawn from service

for an average time of about 105 days for locomotives and 109 days for cars.[3] (R. 269.)

The Mechanical Department employees are generally divided into six crafts, the sheet metal workers, the carmen and coach cleaners, the machinists, the blacksmiths, the electrical workers, and the boilermakers. (R. 263.)[4] Each craft is composed of both those employees making running repairs and those working in the back shops. The Mechanical Department Association of the Virginian Railway (the company union) claimed to represent employees doing both sorts of work.[5] Accordingly, when a dispute arose on the Virginian as to who was the representative of the Mechanical Department employees, the contesting organizations—the Federation and the Association—agreed that the list of eligible voters should comprise all of the employees, including those working in the back shops. (Complainant's Ex. 3, printed as Ex.

[3] This does not mean that the repairs took 105 or 109 days, which included the time the equipment was in the shops awaiting repair. A general overhauling of a locomotive does not take nearly that long. See *Industrial Accident Commission* v. *Davis*, 259 U. S. 182.

[4] See First Annual Report of the National Mediation Board (for the year ending June 30, 1935) Table VIII, p. 36. This does not mean that all six crafts may not be represented by a single organization if the majority in each craft so choose.

[5] The agreement between the Association and the Railway applied to all Mechanical Department employees, whether engaged in running or classified repairs. See Def. Ex. R, R. 244, 245, not printed in full in the record. See note 10, *infra*.

A to the Bill of Complaint. R. 31–33.) The number of eligible voters in the six crafts combined was 824. (R. 263.) Of this number, 322 were engaged in making classified repairs in the back shops at Princeton, West Virginia. (R. 269.)[6] The remaining Mechanical Department employees, including 20 at Princeton, were engaged in making running repairs.

Petitioner claims that these 322 men working in the Princeton shop are not subject to the commerce power, and that therefore the election in which those men were permitted to vote[7] and the certification under the Railway Labor Act applying to them as well as to the employees making running repairs are illegal and void.

The Government does not claim that these backshop employees are engaged *in* interstate commerce. But the power of Congress over the railroads engaged in interstate transportation is not limited to the regulation of those transactions which are themselves interstate. *Baltimore & Ohio R. Co.* v. *Interstate Commerce Commission,* 221 U. S. 612; *Southern Ry. Co.* v. *United States,* 222 U. S. 20; *Houston E. & W. Texas Ry. Co.* v. *United States,* 234 U. S. 342; *The Minnesota Rate Cases,* 230 U. S. 352; *Railroad Commission of Wis-*

[6] Until 1926, when the road was electrified, Princeton was a division point, and running repairs were also made there. (R. 177.)

[7] No separate tabulation was made of the votes of the employees making running and classified repairs.

consin v. *Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563; *Schechter Poultry Corporation* v. *United States*, 295 U. S. 495, 544. In the *Schechter* case the Court stated:

> The power of Congress extends not only to the regulation of transactions which are part of interstate commerce, but to the protection of that commerce from injury. *It matters not that the injury may be due to the conduct of those engaged in intrastate operations.* Thus, Congress may protect the safety of those employed in interstate transportation "no matter what may be the source of the dangers which threaten it." *Southern Ry. Co.* v. *United States*, 222 U. S. 20, 27. We said in *Second Employers' Liability Cases*, 223 U. S. 1, 51, that it is the "effect upon interstate commerce", not "the source of the injury", which is "the criterion of congressional power." We have held that, in dealing with common carriers engaged in both interstate and intrastate commerce, the dominant authority of Congress necessarily embraces the right to control their intrastate operations in all matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to secure the freedom of that traffic from interference or unjust discrimination and to promote the efficiency of the interstate service. The *Shreveport Case*, 234 U. S. 342, 351, 352; *Wisconsin Railroad Comm'n* v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563, 588. [Italics supplied.]

The purpose of the Railway Labor Act is to prevent labor disputes and strikes "which threaten the service of the necessary agencies of interstate transportation." *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, 570. In order to accomplish this purpose, the Act must be applied to all railroad employees whose work is essential to the performance of the transportation service. If a cessation of work will prevent the safe and uninterrupted movement of trains, it will directly interfere with interstate commerce, regardless of whether the striking employees are themselves engaged in interstate commerce or not.

There can be no doubt that the mechanical department of a railroad is essential to its operations. Railroads must keep engines and cars in condition. They cannot engage in transportation without having their equipment repaired. The equipment is in continuous need of repair. Often light repairs in roundhouses or yards are sufficient, but in the course of time all cars and engines must be overhauled and heavy repairs made if railroad transportation is to be safely and efficiently carried on. The repair departments, including the shops, are integral parts of every transportation system.[8]

A strike among back-shop employees would immediately and substantially interfere with the ef-

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[8] The record in *Railroad Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, reveals that in 1934 there were 86,493 employees engaged in the back shops on the Class I railroads. (See 295 U. S. at 388.)

fective operation of any railroad. The equipment under repair in the shops could not be returned to the lines. The equipment which was kept in service would, as it came in need of repair, endanger the safety of interstate transportation. If the strike was not quickly brought to a close, the movement of trains might soon be prevented for lack of safe equipment.[9]

The relationship between the back-shop employees and those engaged in making running repairs suggests another reason why labor disputes involving the former would interfere directly with the running of trains. On each railroad, as on the Virginian, each craft of employees engaged in repair work is represented by one labor organization; in the negotiation of labor disputes no distinction is made between those repair men who work in the shops and those who work in roundhouses or yards.

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[9] The trial court found (R. 270):

"It will also be seen from the evidence that when these shops are in operation at approximately their full capacity, there is, so to speak, a stream of engines and cars passing through them, out of and back into interstate transportation activity. And while it is true that engines and cars repaired or rebuilt there are frequently out of service for comparatively long periods (the average being 105 and 109 days, respectively) I have no serious doubt that if the operations in the shop were suspended by a labor dispute for any considerable length of time, the interstate transportation service of the Railway would be seriously hampered or interrupted and if the suspension in the shops continued very long that such interruption would very seriously cripple its interstate transportation operations."

As has been pointed out, all of the Mechanical Department employees on the Virginian Railway are covered by a single labor agreement.[10] Under this agreement, which can be regarded as typical, employees regularly assigned to the shops are subject to call for emergency work on the line. (Rule 8 (a).) The seniority rules, which give preference to the employees longest in service, establish separate seniority lists for crafts or subdivisions of a craft, but do not distinguish between employees making running and classified repairs. (Rule 28 (a).) Thus if the force is being reduced or increased, back-shop employees may exercise their seniority rights to replace men engaged in running repair work, and vice versa. Apprentices to the mechanical trades, of whom there is to be one for every four mechanics, may be transferred from point to point on the railroad—indiscriminately between running repairs and the back-shops—so as to "secure a complete knowledge of the trade." (Rule 36 (f, g).)

It is plain from the above illustrations that although at any given time some employees may be assigned to heavy and some to light repair work, the mechanical department employees of a carrier

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[10] The agreement was introduced in evidence as Defendant's Exhibit R (R. 244), but was not printed in full in the record. It has been filed in this Court as an original exhibit certified by the District Court, pursuant to Rule 10, Paragraph 5.

are regarded as a unit with interchangeable duties and assignments.[11] A dispute between a carrier and any of such employees would be handled by the organization representing all of them under the agreement applying to all of them. In the event that a dispute was not settled amicably, a strike or lockout would affect back-shop and other employees without distinction. The conclusion of the Circuit Court of Appeals (R. 324) that a labor controversy with the back-shop employees would almost necessarily be communicated to the employees engaged in interstate transportation does not seem open to challenge.[12]

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[11] The detailed classification of railroad employees by the Interstate Commerce Commission makes no differentiation between mechanical department employees assigned to running repairs and those assigned to back shops. See Interstate Commerce Commission, Order of April 18, 1921, classifying railroad employees.

[12] The Circuit Court of Appeals found (R. 324–325): "For the machinery thus provided to be effective, it must apply to all of the employees of an interstate carrier; for not only would it not be practicable to establish separate organizations for bargaining among the employees engaged in interstate commerce as distinguished from those who are not, but disturbances among the latter would inevitably disturb the interstate business of the carrier and would almost necessarily be communicated to the employees engaged in interstate transportation. The defendant, for example, employs machinists engaged strictly in interstate commerce as well as those who are employed in back shop work. It would be out of the question for it to bargain with the former and not with the latter; and, even if this were possible, a labor controversy with those involved in back shop work would be communicated to the others * * *."

Experience in the nationwide shopmen's strike of 1922 illustrates both the probability that the shopmen making both running and classified repairs will be involved in the same labor dispute and the obvious fact that a strike by railroad shopmen directly interferes with interstate commerce. In that strike all of the shopmen on the railroads of the country went on strike. The strike was held to constitute a direct and major interference with interstate commerce (*United States* v. *Railway Employees' Department, American Federation of Labor,* 283 Fed. 479, 290 Fed. 978, N. D. Ill.),[13]

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[13] The effect of the shopmen's strike was described by the District Court as follows (290 Fed., at 981):

"As to the damage inflicted upon the railroads by the strike, the evidence shows that the total cost of the strike on the 50 railroads from which testimony was adduced, amounted to more than $96,000,000. This represents only money actually paid out on account of the strike, and does not include damages to property, loss of business incurred, increased cost of doing business, nor loss by claims for damages. * * * The 50 railroads from which proof was taken had in their employ on the 1st of July, 1922, prior to the strike order becoming effective, approximately 277,000 shopmen. Of this number, more than 90 per cent. in every instance responded to the strike call. In some cases, the number of those answering the call was as high as 98 per cent.

"The general effect of the strike on the performance and operations of the fifty railroads from which testimony was adduced, was to increase delays of freight, passenger, and mail service approximately 50 per cent. The general effect of the strike on the motive power of the 50 railroads from which proof was furnished was to bring about a general breakdown and deterioration of motive power, resulting in the consumption of such surplus motive power as those rail-

and the Virginian Railway itself sought and obtained an injunction against the interference with interstate commerce caused by the strike on its lines (R. 44).

Petitioner urges that although the Railway *does* perform its own classified repair work, it *could* contract with outside firms, such as the Virginia Bridge and Iron Works and the Baldwin Locomotive Works to perform the repairs.[14] Under such circumstances, it is argued, a strike among the back shopmen would not interfere with interstate transportation. But neither petitioner nor other railroads are in practice willing to rely on outside firms for the repair of their equipment, and the

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roads had on the 1st of July, 1922, and in the inability on the part of most of those roads to perform any back shop repairs during the early months of the strike, and in limiting repairs from then on.

"The general effect of the strike on business and industry of the country, as evidenced by the testimony of 53 representatives of leading business concerns of the country, was a general disturbance, slowing down of production, reduction of volume, loss of customers, and monetary losses due to delays on the part of business houses in receiving and obtaining raw materials, and in shipping and transporting finished products. The effect of the strike on the United States Postal Department, as evidenced by the certificate of the Postmaster General, was the discontinuance of 706 trains carrying United States mail, operating over a total of 39,716 miles. As a result of this, 462 United States post offices, serving a population of 352,671 people, were without mail service."

[14] The Virginian has had "some types" of work performed by the Virginia Bridge and Iron Works, and has "had work done" by the Baldwin Locomotive Works. (R. 178.)

general course of business in the industry is in itself the strongest evidence that a railroad needs its own shops if it is to operate efficiently. The cost of having outside companies make substantial repairs on equipment, which has been proved to be excessive,[15] would in itself impose a heavy burden upon the interstate transportation system. The argument that in case of a strike all the heavy repair work could be performed by independent contractors also overlooks the fact that the em-

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[15] In a series of investigations between 1921 and 1925, the Interstate Commerce Commission studied the cost to certain carriers of having repairs to locomotives and cars made under contracts with outside firms, such as the Baldwin Locomotive Works and the American Locomotive Company. See *Construction and Repair of Railway Equipment: Pennsylvania R. Co.*, 66 I. C. C. 694; *Id.: Atlantic Coast Line R. Co.*, 66 I. C. C. 727; *Id.: New York Central R. Co.*, 66 I. C. C. 732; *Id.: Chicago & N. W. Ry. Co.*, 69 I. C. C. 143; *Id.: Seaboard Airline Ry. Co.*, 69 I. C. C. 151; *Id.: Central R. Co. of New Jersey*, 89 I. C. C. 751, 104 I. C. C. 352; *Id.: Various Railway Companies*, 91 I. C. C. 399; *Id.: Erie R. Co.*, 93 I. C. C. 646; *Id.: New York, New Haven and Hartford R. Co.*, 107 I. C. C. 721. In each case the carrier explained that the contracts had been made because of lack of capacity, for one reason or another, to perform the work in its own shops. In every instance the Commission found the cost much greater than it would have been in the carrier's own shops, although in some cases the extra expense was found justified by such emergencies as the 1922 shopmen's strike. These reports of the Commission demonstrate that the practice of making such contracts with outside firms is not conducive to the economical operation of the railroads. The following table indicates the findings of the Commission, with respect to some of the more important carriers investigated, as to the approxi-

ployees engaged in running repairs, represented by the same organization, would invariably be parties to the same dispute, and that the running repairs could not be made except by the carrier itself. The trial court properly found that (R. 270–271):

> The effort of the Railway to show that these shops are not necessary to the conduct of its transportation activities was not impressive. While the operation of the shops by the Railway is not absolutely necessary, for the reason that the Railway could probably have the work, in large part at least, done by independent contractors, it has neverthe-

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mate average cost to the carrier of repairs of the same equipment in the carriers' own shops and in the shops of outside companies.

Name of carrier	Cost in carriers' own shops	Cost under contracts with outside firms	Citation
Pennsylvania R. Co.	$9,000	$21,000–$25,000	66 I. C. C. at 697.
New York Central R. Co.	$6,000	$21,900	66 I. C. C. at 741.
Seaboard Air Line Ry. Co.	$7,700	$16,300	69 I. C. C. at 157.
Erie R. Co.:			
Locomotives	$2,000–$8,000 (average 100%).	$8,000 – $64,000 (average 438%).	93 I. C. C. at 653.
Cars	$227	$962	93 I. C. C. at 657.
New York, New Haven & Hartford R. Co.	Average 100%	Average 237%	107 I. C. C. at 725.

In these investigations, the Erie, the New Haven, and the Central Railroad of New Jersey explained that the 1922 shop strike had forced them to have their equipment repaired by outside firms. The tremendous burden which a shop strike imposes upon carriers, even though they succeed in having their repairs made by other companies, is demonstrated by the above figures.

> less chosen to do the work in its own shops, which is the only practical method of keeping such important operations under its immediate control. In that way it avoids the chances of being embarrassed by delays and other troubles beyond its control and the consequent danger of interruption of its transportation business.

Petitioner contends further that the repair work in the back shops is a purely local activity similar to manufacturing [16] and mining, inasmuch as the same work *could* be performed by independent concerns not engaged in transportation. But the mechanical department of a railroad is an integral part of the *railroad,* and is obviously more closely related to interstate transportation than mines or factories or even independent companies doing similar work.

The validity of the Railway Labor Act, as applied to railroad employees engaged in intrastate activity, would seem to have been determined by this Court in *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, 570. The Court there upheld the Railway Labor Act as applying to the *accounting and clerical* forces of a

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[16] Petitioner defines "manufacture" as "transformation—the fashioning of raw materials into a change of form for use." (Pet. Br. p. 44.) Repair work is obviously neither "transformation" nor "manufacture." A garage in which automobiles are repaired is not regarded as an automobile factory.

railroad—employees obviously engaged in intrastate activity.[17] Counsel for the railroad in that case did not rely on the intrastate nature of the work performed by the clerical employees, and the Court did not directly pass upon the point in its opinion. But counsel did assert the invalidity of the Act under the Commerce Clause. This Court, however, entertained "no doubt of the constitutional authority of Congress to enact the prohibition. * * * Congress may facilitate the amicable settlement of disputes which threaten the service of necessary agencies of interstate transportation."

Petitioner relies on the first *Employers' Liability Cases*, 207 U. S. 463, and on cases arising under the Second Employers' Liability Act. *New York, New Haven and Hartford Railroad Co.* v. *Bezue*, 284 U. S. 415; *Industrial Accident Commission* v. *Davis*, 259 U. S. 182; *Minneapolis & St. Louis R. Co.* v. *Winters*, 242 U. S. 353. These cases relate to an entirely different problem, and are clearly distinguishable from the case at bar. The Employers' Liability Acts regulate the rule of liability applying to injuries to railroad employees. The

[17] The record in that case discloses that the employees involved consisted in the main of clerical machine operators, office and file clerks, accountants, bookkeepers, storage room clerks, station and yard clerks, secretaries, janitors, messengers, and telephone operators. (See U. S. Supreme Court, Oct. Term, 1929, No. 469, R. 507–508, 145, 421, 858, 1088.)

absence of such federal regulation applying to injuries suffered by shop employees or others not engaged in interstate commerce would not interfere with interstate transportation in any way. But although interstate commerce might not be affected at all by the rule of liability applicable to the injuries of shopmen, it is directly affected and will suffer if shopmen cease to work and if railroad equipment is not repaired. The purpose of the Railway Labor Act is to prevent interruptions to interstate transportation. If this goal is to be achieved, the commerce power must permit such regulation as will prevent labor disputes among shop employees—even though it might not include the power to prescribe the rules of liability for injuries to the same men.

The cases cited arising under the Second Employers' Liability Act, which hold that shopmen are not engaged in interstate commerce, do not purport to limit the power of Congress.[18] The Court has made it plain that the decisions under that statute holding particular employees not to be engaged in interstate commerce "are based upon the limitations of that statute and do not define the scope of constitutional authority as to employees of interstate carriers." Dissenting opinion in *Railroad Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, 389; *Illinois Central R. Co.* v. *Behrens*,

[18] Petitioner admits that these cases are "not controlling on the question at issue". (Pet. Br., p. 42.)

233 U. S. 473, 477; *Chicago & Northwestern Ry Co.* v. *Bolle*, 284 U. S. 74, 78.

It is true that there is a dictum in the first *Employers' Liability Cases* indicating that "shops for repairs" were not regarded as within the Federal commerce power.[19] But the Court in that case did not have before it, and was not concerned with, the question of whether labor disputes with shop employees might directly interfere with interstate transportation. As this Court has frequently declared:

> It is a maxim, not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit, when the very point is pre-

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[19] The language referred to is as follows (207 U. S. at 498):

* * * a few illustrations showing the operation of the statute as to matters wholly independent of interstate commerce will serve to make clear the extent of the power which is exerted by the statute. Take a railroad engaged in interstate commerce, having a purely local branch operated wholly within a State. Take again the same road having *shops for repairs*, and it may be, for construction work, *as well as a large accounting and clerical force*, and having, it may be, storage elevators and warehouses, not to suggest besides, the possibility of its being engaged in other independent enterprises.

* * * * *

As the act thus includes many subjects wholly beyond the power to regulate commerce * * *. [Italics supplied.]

> sented for decision. The reason of this maxim is obvious. The question actually before the court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated.

Cohens v. *Virginia*, 6 Wheat. 264, 399; *Humphrey's Executor* v. *United States*, 295 U. S. 602, 627.

The dictum in the *Employers' Liability Cases* classifies repair shops and the "accounting and clerical force" together as beyond the regulatory power of Congress. And yet in the *Texas and New Orleans* case the application of the Railway Labor Act to accounting and clerical employees was sustained. Despite its silence on this question, the reasoning in that opinion would seem conclusively to establish the validity of the Railway Labor Act as applied to railway employees not themselves engaged in interstate commerce.[20]

II

The Railway Labor Act is Not Invalid *in Toto* Because it May Apply to Some Employees Not Within the Federal Power

Petitioner urges that the Railway Labor Act is unconstitutional *in toto* because it may apply to

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[20] See also the dissenting opinion of the Chief Justice in *Railroad Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, 388.

some railroad employees engaged in activities not subject to federal regulation. The contention is that the Act is inseparable and, therefore, wholly invalid.

Section 1 of the Act defines "employee" so as to bring within the Act all persons performing any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect or as subsequently amended.[21] The order of the Interstate Commerce Commission defining "employee" is that of April 18, 1921 (quoted on p. 39 of Pet. Br.), which lists and classifies all the employees of carriers for purposes of filing reports with the Commission.[22] This order has not been modified in any particular material to the present case. Thus under this order the Railway Labor Act now applies to all railway employees.

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[21] The definition of "employee" in Section 1 of the Act is as follows:

"The term 'employee' as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders * * *."

[22] In other orders not material here, the Commission has defined "subordinate official" so as to distinguish superior officers from such officials. See Order of February 5, 1924, *Ex parte* 72.

The *Texas & New Orleans* case makes it plain that the Railway Labor Act may constitutionally be applied to all employees whose work is essential to an efficient and safe transportation service in order that the Act may achieve its purpose of preventing labor disputes which might interrupt such service. Inasmuch as the "business of a railroad" is "the transportation of persons and things in commerce" (*Chicago & N. W. Ry. Co.* v. *Bolle*, 284 U. S. 74, 78), the normal inference would be that the carriers would not employ persons whose activities were not regarded by the carriers themselves as necessary to the rendering of the transportation service. Many employees, of course, are not engaged in running trains, but in intrastate activities, and yet a railroad could not function if these activities were not carried on. It clearly could not operate without officers, or accountants, or clerks, or shopmen, to mention only the major examples of employees not themselves engaged in interstate commerce. It would seem clear that such employees, who comprise a large majority of those not engaged in interstate commerce,[23] are subject

[23] In the only tabulation known to us classifying the railroad employees not engaged in interstate commerce (a table submitted by the *railroads* in *Railroad Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, the railroads claimed that there were 211,107 employees not engaged in interstate commerce. Of these 86,493 were shopmen, 36,996 clerks and accountants, and 6,779 officers, making a total of 130,268 for these three classes alone. See 295 U. S. at 388; October Term, 1934, No. 566, R. 266–267.

to the regulation embodied in the Railway Labor Act (see Point I). Moreover, disputes affecting employees whose work might not be regarded in itself as closely related to interstate commerce might well spread to other employees.[24]

Disputes between a carrier and any of its employees might therefore directly interfere with the efficient functioning of the interstate transportation system. Whether there are any employees as to whom such would not be the case seems highly doubtful. Petitioner has referred specifically only to the back-shop employees themselves, and we have demonstrated above that petitioner's argument that such employees are not properly subject to the Act is unsound. The Record does not contain evidence with respect to any other group of employees. The Circuit Court of Appeals found it (R. 331–332)

> * * * hard to imagine what class of employees of an interstate carrier might not present a danger of disturbance of its interstate business through strikes or other labor

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[24] Thus a dispute with any group of clerks, such as stenographers, might involve the entire clerical and accounting force, the freight handlers, and the express and station employees, inasmuch as the stenographers are represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees. See *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. at 554; October Term, 1929, No. 469, R. 507–8, 421, 145, and 1088. Most of the occupations which might be deemed purely intrastate are represented by the Brotherhood of Railway Clerks. *Ibid.*

> disturbances and thus afford a proper field for the application of the power of Congress. No such class is suggested, except the "back shop" employees before the court, as to whom we have seen that the suggestion cannot be entertained. If, however, there are such employees, it would seem, to use the language of the Chief Justice in the *Railroad Retirement Case*, 295 U. S. at 389, that "In the administration of the Act there would be ample opportunity to make all necessary distinctions between employees engaged in interstate commerce and any others who might be found to be otherwise exclusively employed, so as to exclude the latter from its benefits without impairing the general operation of the Act."

If it is not shown that there are any employees to whom the Railway Labor Act cannot constitutionally be applied, no question of separability can arise. In the subsequent discussion it will be assumed for purposes of the argument that there are some such employees.

The question of whether or not a federal statute is separable depends primarily upon the intention of Congress. *Carter* v. *Carter Coal Company*, 298 U. S. 238, 312; *Railroad Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, 362; *Utah Power & Light Company* v. *Pfost*, 286 U. S. 165, 184; *Williams* v. *Standard Oil Company*, 278 U. S. 235, 241. There can be no question as to what the intention of Congress would have been in this case. Let us assume that there are a few thou-

sand railroad employees, at most a small proportion of the whole,[25] who might be regarded as outside the regulatory power of Congress. The purpose of Congress was to prevent labor disputes interrupting service on the interstate railroads. If Congress had been told when the Act was before it that it had no power to prevent such disputes among a small proportion of the carriers' employees, would it have then decided not to attempt to prevent disputes at all? It seems obvious that Congress would have desired the Act to apply to a large proportion of railroad employees, in order to prevent a large proportion of the labor disputes which might interfere with interstate transportation, rather than to have the Act declared entirely void. It would surely be more in the public interest to prevent a large number of disputes than to prevent none.

That such would have been the congressional intention is confirmed by a consideration of the necessary character of the work performed by any employees whose work could not constitutionally come under it. In the language of the Circuit Court of Appeals (R. 333):

> Such employees would be outside the realm of federal power only on the ground that disputes and strikes on their part would not interfere with interstate commerce; and since the purpose of the act is to avoid such interference, its intention would not be in

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[25] See note 23 on page 32, *supra*.

> any way violated by excluding them from consideration in the administration of the act.

The intention of Congress would clearly not be violated by excluding the small proportion of the total number of employees on a railroad whose work was not essential to the carrying on of the transportation service.

Thus, even apart from the separability clause (Section 11), Congress would have intended the Railway Labor Act to stand if its application to employees engaged in purely intrastate activities were regarded as invalid. The separability clause, which reverses the normal presumption of inseparability (*Carter* v. *Carter Coal Company, supra*), would seem to make the intention of Congress clear beyond question.

Petitioner's argument that the Railway Labor Act is invalid *in toto* also ignores the decision of this Court in *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, in which the Act was held valid and given application to a dispute among the clerks. The definition of "employee" referred to on page 31, *supra,* was originally embodied in the Railway Labor Act passed in 1926, and was not altered by the 1934 amendments. Thus the Act would have been equally as unconstitutional when the *Texas and New Orleans* case was before this Court as at the present time if petitioner's argument that the definition makes the Act entirely invalid is a sound

one. It is true that the question of separability was not raised in that case and was not passed upon by this Court in its opinion, but the constitutionality of the Act was attacked. The decision upholding the Act and applying it to clerks is clearly inconsistent with the view that the Act is entirely invalid.

The validity of the Railway Labor Act was again recognized in *Railroad Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, at 369. The discussion of separability in that case fully supports the Government's position. The Court ruled that the Railroad Retirement Act was inseparable because Congress would not have intended the compulsory pension system to stand with many of its most important features eliminated. The intention of Congress was regarded as controlling. The Court did not hold the Retirement Act inseparable on the ground that it applied to employees not engaged in interstate commerce.

Petitioner relies on the First *Employers Liability Cases* and similar authorities. See *Trade-Mark Cases*, 100 U. S. 82; *United States* v. *Reese*, 92 U. S. 214; *James* v. *Bowman*, 190 U. S. 127; *Butts* v. *Merchants and M. Transportation Co.*, 230 U. S. 126; *Illinois Central R. Co.* v. *McKendree*, 203 U. S. 514. These cases are clearly distinguishable from the Railway Labor Act.

In the first place, in none of them were the situations to which the statutes in question might be invalidly applied so insignificant in relation to the

whole, or the obvious intention of Congress so apparent.

Secondly, the first Employers Liability Act applied *in terms* to all employees of carriers engaged in interstate commerce. The Railway Labor Act on the other hand applies only to those employees listed in the orders of the Interstate Commerce Commission.[26]

Finally, it should be noted that the statutes involved in *The Employers Liability Cases* and the other cases cited did not contain a separability clause.[27] Section 11 of the Railway Labor Act[28] provides:

> If any provision of this Act, *or the application thereof to any person or circumstance,*

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[26] The Interstate Commerce Commission would presumably amend its orders to exclude such local occupations as this Court might determine to be beyond Congressional power. Thus, the rewriting would be not by this Court, but by an administrative agency specifically authorized by Congress.

[27] *Hill* v. *Wallace*, 259 U. S. 44, cited by petitioner, held that a separability clause would not preserve incidental and auxiliary features of a statute when the fundamental provisions upon which they were based were invalid. Various provisions of the Future Trading Act were there regarded as inseparably interwoven, so that it would have been necessary for the Court to dissect the law and reframe a valid statute. No such procedure would be required if certain minor applications of the Railway Labor Act were regarded as invalid.

[28] Section 11 was enacted as part of the 1926 Railway Labor Act. It reads as follows:

"SEC. 11. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision

is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby. [Italics supplied.]

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to other persons or circumstances, shall not be affected thereby."

Section 8 of the Act of June 21, 1934, amending the Railway Labor Act, contains a new separability clause reading as follows:

"SEC. 8. If any section, subsection, sentence, clause, or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed."

The new section is not inconsistent with the old, and, the Government submits, did not repeal it. This view is confirmed by the specific manner in which amendments to each section of the 1926 Act were described in the 1934 Act. Sections 1 to 6 of the 1934 Act specifically amend Sections 1 to 6 of the 1926 Act "to read as follows", and accordingly are complete substitutes for those sections in the earlier Act. See the official text of the statute in 48 Stat. 1185. Section 7 of the 1934 Act amends Sections 7, 8, 10, and 12 of the 1926 Act, referring specifically to each section amended. If Congress had intended that Section 8 of the 1934 Act be substituted for Section 11 of the 1926 Act, it would presumably have adopted the same method of statement used in amending the other sections of the 1926 Act, and provided that "Section 11 of the Railway Labor Act is amended to read as follows." Inasmuch as this was not done and the two sections are not inconsistent, it seems clear that the 1934 Section was enacted out of an abundance of caution, in order to add the expression of intention as to the separability of "any section, subsection, sentence, clause, or phrase" to the more general language of Section 11.

The Code of Laws of the United States treats Section 11 as superseded by Section 8 of the 1934 Act, but for the reasons set forth, this would seem to be erroneous. The Code does not, of course, contain the official text of the statute.

The intention of Congress that the remainder of the Act should be upheld, if its application to any group of persons be held invalid, is there clearly set forth. In the present case there are no considerations which tend to overcome the presumption of separability raised by the above clause. For as has been shown, every consideration of intention and congressional policy clearly indicates that Congress would rather have had an Act which would serve to prevent labor disputes among the vast majority of railroad employees than no act at all.

III

The Obligations Imposed Upon the Petitioner by the Decree Are in Execution of Legally Enforceable Provisions of the Railway Labor Act

The decree entered by the District Court (R. 282–283), and affirmed without modification [29] by the Circuit Court of Appeals (R. 341), has four different aspects: (1) it restrains the petitioner from interfering with or coercing any of its Mechanical

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[29] In answer to the argument of the appellant (now petitioner) that the decree was without time limit, the Circuit Court of Appeals did say that "the reasonable interpretation of the language [used in the decree] is that the defendant is directed to treat with the Federation so long as it is the representative of its employees and is restrained from treating with others as their representative so long as the Federation occupies that position." (R. 339.) This might conceivably be regarded as a modification, but, if so, it is not material to the issues before this Court.

Department employees with respect to their right of selecting representatives for the purposes of the Railway Labor Act; (2) it restrains the petitioner from fostering any union of the Mechanical Department employees for the purpose of interfering with the respondent; (3) it requires the petitioner to "treat with" the respondent and to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes between the petitioner and the Mechanical Department employees; and (4) it restrains the petitioner from entering into any contract, undertaking, or agreement of whatsoever kind concerning rules, rates of pay, or working conditions affecting its Mechanical Department employees, save and except only with the respondent.

In this and in the succeeding point (pp. 81–102 *infra*) we shall discuss only the third and fourth aspects of the decree (hereinafter referred to respectively as the "affirmative obligation" and the "negative obligation"). Those are the only parts of the decree which the petitioner contends (1) impose obligations which are not made enforceable by the statute and (2) deprive the petitioner of liberty and property without due process of law. Petitioner does not attack upon these grounds the other provisions of the decree. These other provisions rest upon Section 2, Third, and Section 2, Fourth, of the Act, and their enforceability and

validity are conclusively determined by *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548.

In answering these contentions of the petitioner, we shall consider: (1) the meaning of the provisions of the decree and statute here involved, pp. 42 *et seq.*; (2) whether the provisions of the statute upon which the decree rests are legally enforceable, pp. 54 *et seq.*; and (3) whether the Acts as here applied deprives the petitioner of liberty or property without due process of law, pp. 81 *et seq.* For convenience and brevity we take up each of these points first in connection with the so-called affirmative obligation, and then in connection with the negative obligation. We contend that each is authorized by the statute and is not in violation of the Fifth Amendment to the Constitution.

A. THE MEANING OF THE DECREE AND THE STATUTE

1. THE AFFIRMATIVE OBLIGATION

The affirmative obligation is stated in the decree as follows (R. 282):

> 1. That the said defendant, by and through its duly authorized officers or agents, shall treat with said System Federation No. 40, Railway Employes Department of the American Federation of Labor, so certified as aforesaid, and exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all dis-

> putes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of the defendant growing out of any dispute between the defendant and the Mechanical Department employes thereof.

This paragraph and the sections of the statute upon which it rests (see pp. 54 *et seq., infra*) impose upon the petitioner a duty to afford to the duly designated representative of its employees an opportunity to be heard on matters which the representative wishes to present, and to take up with him such contractual proposals as the carrier itself determines to offer as the basis of a collective bargain. To perform this obligation is (in the technical language commonly used in industrial disputes) *"to recognize"* [30] the respondent.

Neither the affirmative obligation nor any other part of the decree or statute, as the lower court pointed out,[31] imposes upon the petitioner any duty to enter into a particular agreement, to agree upon

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[30] It is in this sense that the word "recognize" was used by the Government in its brief as *amicus curiae* in the lower court, and is generally used. See *Pennsylvania R. R. Co.* v. *United States Railroad Labor Board*, 261 U. S. 72, 85 (line 5); R. 18, 29, 265.

[31] The Circuit Court of Appeals stated:

"The act does not require of the carrier the making of any agreement. It does not interfere with the normal exercise

particular terms, or to make any contract whatsoever. Indeed, many of the meetings which it contemplates may have none of the characteristics of negotiation and may merely afford an opportunity for the employees of the Mechanical Department to appear through a representative in order to be heard as to grievances or to take preliminary steps in accordance with the arbitral or other provisions of the Act.

2. THE NEGATIVE OBLIGATION

Turning to the particular negative obligation with which we are here concerned, we begin with a statement of its terms. It is ordered (R. 283) that the defendant, its officers, agents and employees are

> further enjoined and restrained of and from, directly or indirectly, entering into any contract, undertaking or agreement of whatsoever kind concerning rules, rates of

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of the right of the carrier to select its employees or to discharge them." (R. 333.)

". . . the parties are not bound to agree even though they may treat. The representatives of the employees, as above pointed out, have important functions to perform under the act, which they can perform only if the railroad recognizes and treats with them as representing the employees; and while negotiation may not result in agreement, this is no reason why the carrier should arbitrarily refuse to negotiate with those whom its employees have chosen to represent them in negotiations. In collective bargaining, it may be that negotiations will not result in agreement, but it is certain that there will be no agreement without negotiation." (R. 321.)

> pay or working conditions affecting its Mechanical Department employes, save and except only with the complainant, System Federation No. 40, Railway Employes Department of the American Federation of Labor.

According to our interpretation, this clause prohibits the petitioner from concluding with anyone other than the respondent a *labor agreement,* that is, an agreement which formulates rules, rates of pay, or working conditions governing all or any substantial part of the Mechanical Department employees. We emphasize the concept of "labor agreement" and distinguish it from the ordinary individual hiring. The ordinary individual hiring in the railroad industry is not commonly regarded, or spoken of, as a contract, agreement, or undertaking. In such a hiring, it is not intended that there shall be permanence of obligation, and the parties, far from spelling out the nature of their relationship, usually proceed on the implied or express understanding that the hiring incorporates such rules, rates of pay, and working conditions as may be embodied either in general statements announced by the company, or in general labor agreements negotiated by the company after collective bargaining with representatives of the employees.

Our interpretation of the negative obligation (which restricts its scope to labor agreements and does not include individual hirings) becomes inevitable when consideration is given (1) to the set-

ting of the decree in relation to the evidence and the pleading in this case, (2) to the meaning of the statutory provisions upon which the decree is based, and (3) to the practical consequences which would follow if the prohibition were presumed to be directed to individual hirings.

On railroad lines throughout the country the practice is to have for each class or craft a single standard of rates of pay, rules, and working conditions.[32] The evidence in the record shows that this general practice is followed on the petitioner's transportation system. An individual who wants a job fills out an application blank which reveals nothing about rates of pay or other rules, and if he is hired it is assumed that the terms of his employment are covered by such collective agreement as may be outstanding. (R. 252–253, 185, 200.)

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[32] Section 5, Third, (e), of the Railway Labor Act requires that "every carrier shall file with the Mediation Board a copy of each contract with its employees in effect on the 1st day of April 1934, covering rates of pay, rules, and working conditions. If no contract with any craft or class of its employees has been entered into, the carrier shall file with the Mediation Board a statement of that fact including also a statement of the rates of pay, rules, and working conditions applicable in dealing with such craft or class. * * *" An examination of all these contracts and statements reveals that the custom of the industry is to have for regular employees in each class or craft a single standard of rates of pay, rules, and working conditions. Sometimes this standard is prescribed by collective contract; other times by mere announcements or statements of the carrier acting independently.

Prior to the filing of this suit, the single standard on the petitioner's line had been formulated in a collective contract between the petitioner and a so-called company union (R. 200) which was in fact a "figurehead" (R. 266) organized "to prevent its [the petitioner's] Mechanical Department employees from exercising their free and untrammeled right to choose their own representative." (Fgs. R. 281.) With this evil in mind, the respondent's bill of complaint prayed (R. 29–30) that the petitioner be restrained—

> from entering into any contract concerning rules, rates of pay, or working conditions affecting the Mechanical Department employees of The Virginian Railway Company, with the Mechanical Department Association of The Virginian Railway Company or Independent Shop Crafts Association of The Virginian Railway Company, *or any other association or "company union"* so called, as the representative of the said Mechanical Department employees, save only the complainant Federation. [Italics added.]

Thus the prayer was obviously directed at a prohibition of labor agreements or collective contracts, not at individual hirings. The decree, as its form indicates, was intended to correspond with the prayer, except that it was so worded as to make it clear that the ban included labor agreements which covered any, as well as labor agreements which

covered all, of the employees in the Mechanical Department.[33] The decree was not intended to prohibit individual hirings. It was understood in this sense by the lower courts [34] and by the parties themselves, at least until the petition for certiorari was filed in this Court.

The decree, of course, rests for its authority upon the statute. Examination of the Act discloses no intent to prevent carriers from making individual contracts of hire with whomsoever they choose. The statute repeatedly refers to "agreements concerning rates of pay, rules, and working conditions" as the contracts to be negotiated between carriers and representatives of their employees, and imposes a duty upon the parties to confer with respect to the making, alteration, and interpretation of such agreements. Section 2, First, Sixth, Seventh; Section 2, First (i); Section 6. Only contracts covering rates of pay, rules, and working conditions for a craft or class are required to be filed with the National Mediation Board. Section 5, Third (e). That section makes it plain

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[33] Observe that the prohibition in the decree is aimed at any contract "affecting its Mechanical Department *employees*." The plural form of the noun "employee" lends emphasis to our construction of the decree as aimed at contracts covering groups of employees.

[34] The Circuit Court of Appeals stated that the act as applied by the decree "does not interfere with the normal exercise of the right of the carrier to select its employees or to discharge them." (R. 333.)

that the Act does not purport to deal with individual contracts of employment, but only with the collective agreement or general statement of rules applying to a craft or class.

The decree, which by its terms is confined to such contracts, undertakings, or agreements, was obviously intended to fit into this statutory plan. The negative obligation, with which we are here concerned, has two alternative statutory foundations. It may rest upon those statutory provisions similar to or expanded from those upheld in the *Texas & New Orleans* case, which prohibited interference by carriers with their employees' selection of representatives. Section 2, Third and Fourth. From the record it is manifest that the insistence of the petitioner upon entering into agreements with company-dominated unions rather than with the Federation was a means of interfering with the employees' freedom in selecting their own representatives. (See pp. 77–80, *infra*.) One purpose of the negative obligation was to prohibit such interference by preventing the carrier from entering into *labor agreements* with such company unions. The similarity between this portion of the decree and the corresponding provision in the prayer for relief (see p. 47, *supra*), as well as the organization of the decree, which places the negative obligation in that paragraph which restrains other acts of interference, lends support to this view.

The negative obligation may also rest upon the second sentences of Section 2, paragraphs Fourth and Ninth, each of which declares that the representative chosen by the majority shall be "*the* representative of the craft or class for the purposes of this Act", and the necessary implication from the provisions of Section 6 (and also Section 2, Second and Sixth) that carriers shall confer with representatives of the employees before changing rates of pay, rules, or working conditions.[35] Since the representative chosen is to be "*the* representative of the craft or class", it is clear that he must be the representative of the entire craft and not merely of the majority who voted for him. That such was the meaning of Congress is manifest from the provision for secret elections in Section 2, Ninth, since the necessary consequence of a secret ballot in which no one can know who supported and who opposed a successful candidate is that the winner represents all.

The representative of the majority is to represent the craft or class only for "the purposes of this Act." The only function which the Act reserves to craft representatives is the making or changing of labor agreements with respect to rates of pay, rules, and working conditions. Section 6; Section 2, Seventh; *cf.* Section 5, Third (e). The Act specifically provides that in any dispute

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[35] It should be noted that the obligations in Section 6 are clearly enforceable, since they are fortified by the penal sanctions of Section 2, Tenth. See Section 2, Seventh.

growing out of grievances or the application of labor agreements the "parties may be heard either in person, by counsel, or by their representatives." Section 3, First (i), (j).

A construction of the decree which would go beyond a prohibition of labor agreements covering the whole craft or minority groups, and embrace individual hirings, would be, in our opinion, not only unwarranted on the face of the record, but also would raise unnecessarily difficult statutory and constitutional questions. If the petitioner were prohibited from hiring any individual person except pursuant to a contract with the respondent, the result would be that the petitioner would be faced with the inescapable dilemma of either contracting with the respondent or going out of business. We believe that no such dilemma exists or was intended.[35a] We concede, and we understand that the respondent also concedes, that under the decree the petitioner is free to continue individual hirings, so long as those hirings do not purport to prescribe rates of pay, rules, or working conditions for a group of men, and so long as they are not

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[35a] The Government interprets the negative obligations imposed by the statute and decree as having the following effect:

When the majority of a craft or class has (either by secret ballot or otherwise) selected a representative, the carrier cannot make with anyone other than the representative a collective contract (i. e., a contract which sets rates of pay, rules, or working conditions), whether the contract covers the class as a whole or a part thereof. Neither the

designed to interfere with or discourage membership in the respondent labor organization.[36]

In concluding our discussion of the meaning of the decree, we wish to point out that neither the decree nor the Act in any way sanctioned the so-called closed shop. Employees are not required to belong to the organization chosen by the majority of their craft to represent them. Indeed, statutory provisions not here in issue specifically outlaw the closed shop in the railroad industry. Section 2, Fifth.

The above analysis of the meaning of the affirmative and negative obligations in the decree makes it

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statute nor the decree prevents the carrier from refusing to make a collective contract and hiring individuals on whatever terms the carrier may by unilateral action determine. In hirings of that sort the individual does not deal in a representative capacity with the carrier and the hiring does not set general rates of pay, rules, or working conditions. Of course, as a matter of voluntary action, not as a result of the statute or the decree, the carrier may contract with the duly designated representative to hire individuals only on the terms of a collective understanding between the carrier and the representative: but any such agreement would be entirely voluntary on the carrier's part and would in no sense be compelled.

If the majority of a craft or class has not selected a representative, the carrier is free to make with anyone it pleases and for any group it pleases contracts establishing rates of pay, rules, or working conditions.

[36] Of course, if the petitioner offered to hire an individual at a higher rate provided he did not join the respondent's organization, the petitioner would be violating other clauses of the injunction which are not now at issue, and also would be violating Section 2, Third, and Section 2, Fourth, of the Act.

clear that (1) the decree does not impose upon the petitioner a duty to make any contract whatsoever; (2) the petitioner retains "the normal exercise of the right of a carrier to select its employees or to discharge them" (*Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, 571); (3) the decree does not prevent any individual employee or group of employees from at any time presenting grievances to the petitioner; and (4) the decree in no way involves "the closed shop." Moreover, it is important to note that (5) the decree does not prohibit the petitioner from negotiating with the respondent a labor agreement under which special compensation or consideration will be given to individual employees or groups of employees upon the basis of special skill, seniority, and the like.[37]

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[37] It is interesting to note that the collective contract under which the petitioner now operates (see note 10, p. 20, *supra*) provides special privileges for senior workers (R. 245), and while stipulating for minimum compensation for each craft or class (Rule 37), does not make it a breach of contract for the carrier to pay more to workers of special skill. The contract also provides for the individual handling of grievances (R. 246). The respondent has already indicated that it is satisfied with the substantive terms of this contract (R. 55, 62, 75–76, 78–79, 206), and so it would appear that no legal obstacle stands in the way of exceptional workers receiving exceptional treatment.

B. THE PROVISIONS OF THE ACT UPON WHICH THE DECREE RESTS ARE LEGALLY ENFORCEABLE

1. THE AFFIRMATIVE OBLIGATION

The affirmative obligation to treat or confer with the representative of the employees may rest either upon the First and Second paragraphs of Section 2, or upon paragraph Ninth. Section 2, First and Second, which were not changed by the 1934 amendments to the Railway Labor Act, are of broader application, and will be considered first.

Section 2, Paragraphs First and Second.

Paragraphs First and Second of Section 2 read as follows:

> First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.
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> Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

It is true that the language of these paragraphs is much the same[38] as that used in Title III, Section 301 of the Transportation Act of 1920, and that the language of that earlier statute has been held to be of imperfect legal obligation. *Pennsylvania Railroad Company* v. *United States Railroad Labor Board,* 261 U. S. 72; *Pennsylvania Railroad System and Allied Lines Federation No. 90* v. *Pennsylvania Railroad Company,* 267 U. S. 203. Ordinarily the incorporation of much the same phraseology in a subsequent statute would justify a presumption that Congress intended the phrases to receive in the new statute the same construction that they had already received in the old. But though this is the ordinary presumption, it is not the invariable rule. Compare *The Abbotsford,* 98

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[38] The language of the two Acts differed in one important respect. Section 301 of the 1920 Act provided that "it shall be the duty of" carriers and their employees "to exert every reasonable effort and adopt every available means *to avoid any interruption to the operation of any carrier* growing out of" a labor dispute. Section 2 of the 1926 Act made it the duty of carriers and their employees "to exert every reasonable effort *to make and maintain agreements concerning rates of pay, rules, and working conditions,* and to settle all disputes * * * in order to avoid any interruption to commerce." This change was deliberately made in order to give definite substance to the previous broad general requirement, with a view to rendering arbitrary refusal to comply subject to judicial compulsion. See the statement of Mr. Donald Richberg in explaining the 1926 Act to the House Committee on Interstate and Foreign Commerce (Hearings on H. R. 7180, 69th Cong., 1st Sess., p. 84).

U. S. 440, 444; *Wood* v. *Brady*, 150 U. S. 18, 22–23; *Bacon* v. *Texas*, 163 U. S. 207, 226. And there are pressing reasons why in this case the presumption should not be indulged in.

As used in the 1920 statute, the paragraphs were ancillary to a system which was bottomed solely upon the force of public opinion and which (except in respect to the production of testimony) was not buttressed by legal, equitable, or criminal sanctions. Indeed, in the second *Pennsylvania* case, Chief Justice Taft said (267 U. S. 216):

> The so-called mandatory language of Section 301 [the predecessor of paragraphs First and Second of Section 2 now under discussion] might, if that section were accompanied by a penalty for its violation or some other means of compulsion, and there were not the other provisions of the Title to help its construction, be given the force of a statutory obligation of the parties to a dispute.

Thus the Court held that the language of the First and Second paragraphs did not create an enforceable obligation, partly because the statute as a whole did not contemplate legal sanctions but relied on publicity.

The Railway Labor Act had an entirely different base and orientation. Although voluntary agreement was the ultimate goal, parties were required, by legal sanctions, not to interfere with the procedure prescribed by the statute as most likely to lead to the amicable settlement of disputes.

Texas & New Orleans R. Co. v. *Brotherhood of Railway Clerks, supra.* When the Railway Labor Act was under legislative consideration in 1926, the proponents of the measure regarded the alteration of the language of Section 2, First and Second, from that used in Section 301 of the Transportation Act of 1920 as sufficient to permit enforcement of the obligations there set forth. See footnote 38, page 55, *supra.* The proponents of the Act pointed out that the extent to which these provisions could be enforced necessarily would have to be evolved by the courts and adapted to the particular violations which might be proved.[39]

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[39] Mr. Richberg, who explained the bill to the House Committee on Interstate and Foreign Commerce, testified as follows in answer to questions as to whether Section 2, paragraphs First and Second, were enforceable (Hearings on H. R. 7180, 69th Cong., 1st Sess.):

"I think any action involving an arbitrary refusal to comply with that duty might be subject to judicial compulsion. * * * In other words, I think it would not be exerting a reasonable effort to make and maintain agreements, for a carrier or its appropriate officers to refuse to even meet a committee that sought to make an agreement" (P. 84).

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"I think that a duty imposed by law is enforceable by judicial power. Of course, this is not a duty which could be enforced in a very absolute way, because it is a duty to exert every reasonable effort. In other words, all that could be enforced by the court would be an order against an arbitrary refusal to even attempt to comply with that duty, but I believe that could be subject to judicial power" (P. 85).

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"In the first place, it is their duty to exert every reasonable effort . * * * to settle all disputes, whether arising out of

The 1934 amendments to the Railway Labor Act greatly enlarged the scope of the enforceable obligations which fortified the procedural aspects of the statutory plan. See page 64, *infra*. In a statutory system of this type, the language of paragraphs First and Second should be read in their natural sense of enforceable obligations and as ancillary to a system resting on legal sanctions.

Any other reading produces obvious absurdities. For example, it is (by Section 2, Tenth) made criminal for a carrier to fail to publish a notice (prescribed by Section 2, Eighth) informing its employees that all disputes will be handled in accordance with the requirements of the Act; that is, by conferences envisaged by paragraph Second, and perhaps also First, of Section 2. Can it be that Congress intended that a carrier should be fined for failure to notify employees that it will hold a conference, but should not be under a legal obligation to hold the conference?

Again, a carrier is by criminal sanctions (Section 2, Tenth) prevented from changing "rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in sec-

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the abrogation of agreements or otherwise, in order to avoid any interruption to commerce. In other words, the legal obligation is imposed, and as I have previously stated, and I want to emphasize it, I believe that the deliberate violation of that legal obligation could be prevented by court compulsion" (P. 91).

tion 6 of this Act." (Section 2, Seventh.) And in Section 6 it is prescribed that:

> SEC. 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the *time and place for the beginning of conference* between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. * * * [Italics added.]

Can it be that a carrier, like the petitioner, which has an agreement, is by the statute required, under penalty of a fine, to set a time and place for a conference when it wishes to change the working conditions of its employees, but is not under a legal obligation to confer with the representative of its employees when they have a grievance or contractual proposal?

These other provisions of the present Railway Labor Act to which we have referred [40] make it

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[40] See also Section 2, Sixth, which provides:

"Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time

abundantly clear that Congress by 1934 (if not by 1926) intended to impose upon carriers an obligation to confer when requested. *Noscitur a sociis.* If the dicta of the Chief Justice in *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, 567–568, intimate a contrary interpretation of the 1926 Act *prior* to the 1934 amendments, we submit that they should not be deemed controlling in construing the Act *after* those amendments.

Petitioner's objection that an obligation of this kind is not subject to enforcement in equity is considered below. See pp. 71–76, *infra.*

Section 2, Paragraph Ninth.

Whether or not paragraphs First and Second of Section 2 are deemed legally enforceable, the requirement in the decree that petitioner treat with respondent is clearly supported by Section 2, Ninth, which, so far as material, provides:

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and place at which such conference shall be held: *Provided*, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further*, That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties."

Although criminal sanctions are not attached to this section, it seems indisputable that civil process was intended to be available in order to compel a party to a dispute to specify a time and place for a conference.

> Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representatives so certified as the representative of the craft or class for the purposes of this Act.

The respondent's brief, pages 19–31, and the opinion of the Circuit Court of Appeals (R. 319), state in such detail the history of federal measures respecting collective bargaining in the railway industry and the legislative history of this particular paragraph that we do not need to review the material again here. The story already twice told reveals a steady progress from a system resting on no other sanction than publicity, to a statutory plan in which voluntary negotiation and arbitration is the goal, but to which legal obligations as to certain procedural steps have been added to make it more likely that the goal will be attained.

It is sufficient here to point out briefly that the Act passed in 1926 was based on the theory that

interruptions to commerce could be prevented through the establishment of a mechanism for bringing carriers and their employees into voluntary agreement. Conferences between representatives of the parties were an integral part of the scheme, and it was regarded as essential that each party have complete freedom of choice in the selection of its own representatives. The effectiveness of the Act was impaired by the insistence of some carriers that the representatives actually chosen by their employees did not represent a majority and their consequent refusal to deal with them. The Act provided no method for bringing the parties together under those circumstances. Section 2, Ninth, was enacted in order to remove this weakness from the statutory machinery.

It is in this setting that the language of Section 2, Ninth, must be read. The second and crucial sentence provides that, "Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act." The use of the auxiliary verb "shall" indicates that the direction is mandatory. *Escoe* v. *Zerbst*, 295 U. S. 490, 493. This mandatory direction is "to treat with." The verb "treat",[41] and, even more for-

[41] The leading dictionaries define the phrase as follows:

1. Oxford or Murray, *New English Dictionary*, vol. 10, pt. 1, p. 307, gives as the first meaning: "To deal or carry on negotiations (*with* another) with a view to settling terms; to discuss terms of settlement; to bargain, negotiate."

cibly, the intransitive verbal phrase "treat with",[42] commonly connote an obligation to meet in order to deal or discuss or negotiate.

In order to show that the statutory language has not the specific imperative force that we ascribe to it, the petitioner advances a number of different arguments which we shall consider successively.

The petitioner asserts that it cannot be supposed that Congress intended to prescribe a legally enforceable obligation to treat since that would be inconsistent with what the petitioner describes as "a voluntary scheme for the adjustment of the relations between carriers and their employees." (Br. 23–25.) At the root of this assertion is a false premise. It is true and important that the ultimate goal of the Railway Labor Act is industrial peace attained by agreements voluntarily ar-

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2. *Standard Dictionary* (1895), vol. 2, p. 1922, gives as a secondary meaning: "To propose and discuss mutually terms of agreement; arrange a treaty: negotiate."

3. *Century Dictionary*, vol. 10, p. 6450, gives as an alternative meaning: "To negotiate, especially for peace; discuss terms of accommodation; used absolutely or with a limiting phrase."

4. Webster's *New International Dictionary* (2d ed., 1936), p. 2699, gives as the primary meaning: "To negotiate; to consider terms of accommodation, settlement, or the like; as to send envoys to *treat* with the French government, or to *treat* for peace."

[42] Petitioner's argument that "treat" is used in the statute not in the sense of "negotiate" but in the sense of "act towards or regard" (Br. 20) confuses the transitive with the intransitive use of the verb, and completely ignores the accompanying preposition "with."

rived at. But it is not true that Congress, in its desire to see that goal achieved, has been indifferent to procedure or has thought that this goal would always be reached if one party were left with complete license to prevent the other party from trying to reach an amicable settlement. To achieve its objective of peace on the railroads through orderly procedure, Congress has, for example, laid down a prohibition against either party interfering with the other party in the designation of its representatives. And this prohibition is enforceable not merely by a suit in equity (*Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548), but even in certain cases by criminal penalties (Section 2, Tenth, of the Act).

Indeed, the sanctions of the criminal as well as the civil law have, by Section 2, Tenth, been made applicable not only to interferences with the designation of representatives (Section 2, Third), but also to interferences with labor organizations of employees (Section 2, Fourth), to coercive attempts to induce employees to join or not to join a labor organization (Section 2, Fourth and Fifth), to changes, without thirty days' notice, in the rates of pay, rules, or working conditions of classes of employees (Section 2, Seventh), and to failure by carriers to notify their employees that disputes will be handled in accordance with the Railway Labor Act (Section 2, Eighth).

Moreover, as this Court has already recognized (*Texas & New Orleans R. Co.* v. *Brotherhood of*

Railway Clerks, 281 U. S. 548, 565–567), the Railway Labor Act provides for injunctions against groups of employees if they strike during and for thirty days after the deliberations of an Emergency Board established under Section 10. Finally, legal sanctions are indubitably attached to various steps in the arbitration processes set out in Sections 3 and 7. (See the opinion of the Circuit Court of Appeals, R. 317–318, also quoted in respondent's brief, pp. 38–40.)

"It is thus apparent that Congress, in the legislation of 1926 [as amended], while elaborating a plan for amicable adjustments and voluntary arbitration of disputes between common carriers and their employees, thought it necessary to impose, and did impose, certain definite obligations enforceable by judicial proceedings." *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, 567.

Indeed, if consistency with the rest of the statute be the standard, it is inescapable that our construction of Section 2, Ninth, meets the test far better than petitioner's construction. In a statute that suspends the employees' right to strike and that prescribes for carriers fines and jail sentences if they do not notify their employees that they will handle disputes in accordance with the requirements of the Act (Section 2, Eighth), or if they change the terms of employment without giving thirty days' notice (Section 2, Seventh), it is only consistent to regard a provision directing a car-

rier to treat as imperative, not hortatory; enforceable, not precatory.

The argument based on consistency which we have just considered is presented a second time in the petitioner's brief in a slightly altered form. It is said (Br. 24) that if Section 2, Ninth, does impose a legally enforceable obligation to treat, it introduces into the Railway Labor Act of 1926 a new principle, and Congress cannot have intended such an innovation, inasmuch as in the Report of the Committee on Interstate and Foreign Commerce of the House of Representatives it is stated that the 1934 Amendments did "not introduce any new principles into the existing Railway Labor Act" and did "not change the methods of conference, mediation, and voluntary arbitration to settle major disputes over wages and working conditions, which are provided in the Railway Labor Act of 1926." See House Rep. 1944, 73d Cong., 2d Sess.

To this the first answer is that joint conference between carriers and representatives of employees was always a "principle" of the Railway Labor Act. See Section 2, First and Second, of the Railway Labor Act of May 20, 1926, c. 347, 44 Stat. 577. Even if, *arguendo,* we assume that prior to the amendments of 1934 the duty to treat was one of imperfect legal obligation,[43] it was nonetheless a fundamental principle. Section 2, Ninth, does not change the "principle" or the "methods" of con-

[43] See, however, pp. 54–56, *supra.*

ference, mediation and so forth. Nor did it alter the ultimate goal of agreement voluntarily arrived at. It did add, for the preservation and protection of existing methods, new legal sanctions. But the legal sanctions added by Section 2, Ninth, are not radically different from (though they are less stringent than) the other legal sanctions added by Section 2, Tenth, so as to cover other phases of the established mechanism or methods of conference. See page 64, *supra*. The language of the Committee Report was evidently not regarded by Congress as inconsistent with the criminal sanctions added by Section 2, Tenth; and there is, therefore, no reason to regard the language as inconsistent with the existence of a civil sanction in Section 2, Ninth.

The petitioner next asserts (Br. 22) that since the provisions of Section 2, Ninth, apply only to cases in which a "dispute shall arise among a carrier's employees," it would be anomalous to find set forth in that section (and nowhere else in the statute) a duty on the part of a carrier to treat with representatives. Such a construction, according to petitioner, would mean that if there was no dispute among the employees, the carrier would not be obliged to treat with their representative.

If we take for the sake of argument the petitioner's underlying assumption that no provision other than Section 2, Ninth, imposes upon carriers

a duty to treat,"[44] nonetheless it does not follow that there is an inexplicable anomaly in imposing upon a carrier a legally enforceable duty to treat *only* in those situations in which a dispute has arisen as to who are the representatives of its employees. Section 2, Ninth (as the respondent has already narrated in detail, Br. 26–31) was proposed and enacted in order to meet a particular evil which common experience, and indeed cases in this Court, showed recurred frequently. *Pennsylvania R. R. Co.* v. *United States Railroad Labor Board,* 261 U. S. 72; *Pennsylvania Railroad System and Allied Lines Federation No. 90* v. *Pennsylvania R. R. Co.,* 267 U. S. 203; *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548. Carriers would decline to meet representatives of their employees on the pretext (or on the genuine ground) that they did not know whom the men wished to select as their agent. That is, carriers declined both (1) to admit that persons claiming to be representatives were the choice of a majority, and (2) to treat with such persons.[45] The remedy

[44] But see our discussion of Section 2, First and Second, pp. 54–60, *supra.*

[45] See testimony of George M. Harrison in the hearings held by the House Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess., on H. R. 7650, pp. 78, 79, quoted in respondent's brief, pp. 27–29. It is interesting to note that the petitioner itself has resorted to the very tactics which were described in the hearings, and which gave rise to the statute (R. 137).

of Section 2, Ninth, was undoubtedly intended to be coextensive with these evils. H. Rep. 1944, 73d Cong., 2d Sess., p. 2. But because Congress provided for a remedy that went as far as the evils which it knew existed, it was not bound to go farther and provide remedies for evils which were not called to its attention and which apparently never existed. So far as we are aware, it was not in 1934, and is not now, common experience for carriers to refuse to treat with persons whose representative character they have admitted from the outset. The imperative obligations of a statute are not to be disregarded because the statute does not cover every evil which imagination may conjecture, particularly when there is no proof that such evil recurs frequently. "It is established by repeated decisions that a statute aimed at what is deemed an evil, and hitting it presumably where experience shows it to be most felt, is not to be upset by thinking up and enumerating other instances to which it might have been applied equally well, so far as the court can see." *Keokee Consolidated Coke Co.* v. *Taylor,* 234 U. S. 224, 227. See also *Central Lumber Co.* v. *South Dakota,* 226 U. S. 157; *Armour & Co.* v. *North Dakota,* 240 U. S. 510, 517; *Hall* v. *Geiger-Jones Co.,* 242 U. S. 539, 557.

The petitioner suggests that the Act should not be construed to impose an obligation to treat upon the carrier because the employees "are under no corresponding duty to negotiate with the representatives of the carrier." (Br. 31.) In our

opinion the representatives of the employees, like the carrier itself, are under an equitably enforceable obligation to confer. Section 2, First, Second, Sixth, Seventh; Section 6. See pp. 54–60, *supra*. However, if it be assumed that Section 2, Ninth, is the only section which enforces an obligation to treat (and that paragraphs First, Second, and particularly Sixth create no legally enforceable duties), then it is true that the statute does not require the employees to treat with the carrier. But if there is an omission it is easily explicable. We know of no labor leader or other employee representative who has refused to "treat with" an employer. Such a representative might in some cases make excessive requests, but it is a novel suggestion that he would fail to make or listen to any request or would be unwilling to treat with the employer. Certainly no suggestion was made to Congress that employee representatives failed to treat with carriers. Moreover, it may be noted that the suspension of the right of employees to strike in combination (referred to on page 65, *supra*) is in some respects an obligation roughly corresponding to the carrier's obligation to treat. In each case the objective is to require the parties to deliberate and consider amicable adjustment before taking important action.

The petitioner also places some reliance on the concluding clause of the applicable sentence of Section 2, Ninth. It is said that the duty imposed, if any exists, is merely to admit that the representative

selected by the majority in an election and certified by the board is "the representative of the class or craft," and that there is no duty to meet with such representative or treat with him. (Br. 20.) If that was all the clause meant, it would be redundant. In an earlier paragraph, Section 2, Fourth, it had already been provided that "The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act." Section 2, Ninth, adds a further obligation, an obligation to treat; and "This addition can not be treated as superfluous or insignificant, or as intended to be without effect." *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, 568. Indeed, the clause in the second sentence of Section 2, Ninth, which specifies that the carrier shall treat with the representative "as the representative of the craft or class for the purposes of this Act" seems designed not to limit the carrier's obligation, but to make it abundantly clear that any treating is with the representative in his representative (not his individual) capacity.

A final point advanced by the petitioner to show that we are mistaken in construing Section 2, Ninth, as creating an enforceable obligation is that such an obligation is "beyond the powers of a court of equity to enforce." (Br. 26–29.) The petitioner's point subdivides itself into three contentions: (1) that a court cannot ascertain whether the obligation is performed; (2) that the process of a

court which directed the execution of the obligation would be intrinsically incapable of enforcement; and (3) that a court does not compel a party to take a preliminary step unless it can and will compel him to achieve the ultimate result to which it is preliminary.

We can perceive no difficulty in ascertaining from objective evidence whether a carrier does in fact meet with representatives upon their request and afford to them an opportunity to be heard on such problems as they raise. Nor is it impossible to ascertain from objective evidence whether in such meetings the carrier acts in good faith. "It is no more difficult to appraise conduct of this sort in connection with * * * the purposes of this Act than in relation to well-known applications of the law with respect to fraud, duress and undue influence." *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, 568. "The state of a man's mind is as much a fact as the state of his digestion." Bowen, L. J. in *Edgington* v. *Fitzmaurice*, 29 Ch. Div. 459, 483 (C. A.).

Nor is there merit to the contention that it is logically or practically impossible to use the process of a court to enforce the affirmative obligation. As we have already stated, pp. 43–44, *supra*, the affirmative obligation is merely to afford to representatives an opportunity to be heard, not to reach an agreement. Such an obligation to afford an opportunity to be heard is frequently enforced by judicial process. Thus mandamus (which is the legal

remedy equivalent to the equitable remedy of mandatory injunction, *United States ex rel. Greathouse* v. *Dern*, 289 U. S. 352, 359; *Miguel* v. *McCarl*, 291 U. S. 442) is addressed to administrative officers to require them to hear and decide questions "in matters involving judgment and discretion, but not to direct the exercise of judgment or discretion in a particular way". *Wilbur* v. *United States ex rel. Kadrie*, 281 U. S. 206, 218; *Interstate Commerce Commission* v. *United States ex rel. Humboldt Steamship Co.*, 224 U. S. 474, 484–485; *United States ex rel. Dunlap* v. *Black*, 128 U. S. 40, 48. And the execution of a decree which requires a carrier to receive human beings for the purpose of conferring with them is physically no more difficult for a court officer to superintend than the execution of a decree which requires a carrier to receive freight cars for the purpose of switching them. *Peoria Ry. Co.* v. *United States*, 263 U. S. 528, 535.

It is true that in the absence of a general statutory scheme which provided for the hearing of grievances and contractual proposals as steps intermediate to other proceedings having themselves legal significance or legal sanctions, a court of equity might not choose to issue such a decree. But the presence of the statutory scheme makes a vital difference. Where such a scheme exists, the order to the carrier to afford a hearing has significance and value even though no contract or settlement of grievances results from the hearing, for the hearing carries order starts in motion other steps in the

statutory process.[47] The importance of the mandatory injunction "in its relation to the plan devised by the Act must have appropriate consideration". *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, 568.

Indeed, it would be difficult to find a better illustration than the line of authority to which the petitioner itself refers (Br. 27–28) to show that an equity court draws a distinction between the enforcement of an obligation which stands alone, and the enforcement of an obligation which is an integral step in a statutory scheme. In the absence of a statutory scheme the chancellor would not compel one who had promised to arbitrate to appoint arbitrators. It was so held in the very case which petitioner cites, *Tobey* v. *County of Bristol,* 23 Fed. Cas. 1313, Fed. Cas. No. 14,065 (C. C. D. Mass.). But as soon as a statutory scheme was established by the legislature, courts of equity no longer hesitated to order a recalcitrant promisor to execute his promise to appoint an arbitrator. *Red Cross Line* v. *Atlantic Fruit Co.,* 264 U. S. 109, 119, 121; *Marine Transit Co.* v. *Dreyfus,* 284 U. S. 263, 274–275, 278.

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[47] Thus, the Circuit Court of Appeals, after outlining the Act's procedure for the adjustment of disputes and grievances, stated (R. 318): "It is clear that all of these provisions, so carefully made for the settlement of disputes which might lead to strikes and industrial warfare, would amount to nothing if the carrier should refuse to recognize or treat with the representatives of its employees * * *."

The situation in the case at bar is like that which exists under modern arbitration statutes, and is quite unlike that which exists when a court is asked to order a partner to carry on a business, an author to write, a performer to act, or a master to paint. (Pet. Br. pp. 27–28.) In those cases a decree, as Judge Story said in the passage cited by the petitioner (Br. pp. 27–28), "would be a vain and imperfect act". If the person to whom such an order was directed chose to defy it, the objective aimed at could not be carried forward or even superintended by anyone else, and the sole remedy would be to fine the defendant for contempt (imprisonment being impossible under the Thirteenth Amendment). Here, on the other hand, even if the hearing does not produce an immediate settlement, not only is other statutory procedure for the same end available, but also the very hearing is likely to facilitate an eventual settlement.[48] As the Circuit Court of Appeals said (R. 321):

> In collective bargaining, it may be that negotiations will not result in agreement, but it is certain that there will be no agreement without negotiation.

[48] In this connection it is interesting to compare with an order directing a carrier to afford a hearing, an order directing a group of employees not to strike during a temporary period. Section 10 of the Act. In the case of each order the decree may not achieve peace, but by promoting deliberative processes and allowing a period of consideration it increases the likelihood of amicable settlement.

The preceding paragraphs also answer the petitioner's contention that a court will not compel a party to take a preliminary step unless it can and will compel him to achieve the ultimate result. The conference cannot be regarded merely as a "preliminary step." Experience shows that in most cases, the conference will itself result in an amicable adjustment between the parties. See National Mediation Board, *Second Annual Report*, p. 1. When settlement does not occur in this way, the conference will be preliminary to an adjustment of grievances or disputes through the good offices of various adjustment boards, of the National Mediation Board, of Emergency Boards, or of other persons. Thus compelling the hearing is preliminary to ultimate steps having legal significance. All the statutory provisions with respect to amicable adjustments and to agreements for arbitration of disputes, indeed the entire policy of the Act, must depend upon the willingness of the parties to hear one another's representatives.

2. THE NEGATIVE OBLIGATION

We turn now to the negative obligation in the decree: *i. e.*, the prohibition against making a labor agreement with another than the duly designated representative.

There are three different possible statutory bases for the negative obligation in the decree. First, that obligation may be regarded as the most appropriate method for a court of equity to enforce the

affirmative statutory obligation to treat. That is, if the petitioner were correct in arguing that a court of equity would be incapable of enforcing the affirmative obligation of the statute by affirmative decree (but see pages 71–76, *supra*), such a court could at least enforce such affirmative substantive obligation by an injunction negative in form. Cf. *Lumley* v. *Wagner*, 1 De G. M. & G. 604.

Second, as we have pointed out at pages 50–51, *supra*, the negative obligation of the decree may be bottomed upon Section 2, Fourth, and Section 2, Ninth. These statutory provisions expressly declare that the representative chosen by the majority shall be "the representative of the craft or class for the purposes of this Act", and therefore imply that no one other than that representative may make a contract with the carrier establishing group rates of pay, rules or working conditions. Of course, as *Lumley* v. *Wagner*, *supra*, shows, there is no question that such a negative obligation is within the enforcement powers of an equity court.

Third, the negative portion of the decree may also be based upon Section 2, Third and Fourth [49]

[49] "Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

which are unquestionably enforceable, both equitably (*Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks, supra*) and criminally (Section 2, Tenth), entirely apart from the statutory provisions hitherto considered.

The evidence in the case shows that for many years the petitioner has been having contractual relations with company-dominated unions which the trial court characterized as "figureheads" (R. 266). The first company-dominated union, known as the "Mechanical Department Association," was

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"Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided*, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization."

a dummy organization having no function except to hold biennial elections for officers (R. 81, 89–90, 103–104, 114) and to sign a contract which was not negotiated but literally dictated by the railway mor than a decade ago (R. 165). The one attempt its officers made to secure better working conditions was entirely abortive (R. 82). A second company-dominated union, known as the "Independent Shop Crafts Association", was also a hollow shell. The Secretary-Treasurer of the organization did not even know who was the Chairman of the organization (R. 163). Although both of these associations were patent attempts to interfere with the self-organization of the employees, petitioner carried on purported contractual dealings with them (R. 75, 105, 45). At the same time the officers of the respondent were unable to see the President of the Railway (R. 75, 79, 104) or anyone with authority to make an agreement for the Railway (R. 75, 78). As petitioner's counsel stated in open court: "We say it frankly, that the defendant has not accepted this organization as the duly appointed representative" (R. 143).

Upon the basis of this evidence the District Judge found that the company-dominated unions were maintained in an "effort to prevent its [the petitioner's] Mechanical Department employees from exercising their free and untrammeled right to choose their own representative" (R. 281) and as one of "the means aforesaid, to endeavor to deprive its Mechanical Department employes of any

and all right to independent representation for the purpose of collective bargaining." (R. 282.)

In view of this evidence and these findings, the negative portion of the decree finds peculiar justification. The lower courts have restrained the petitioner from making labor agreements with others than the respondent because the petitioner had already been making such agreements in an effort to prevent the employees from freely choosing their own representatives. The lower courts saw in the situation as it had already developed a practical, not a theoretical, danger that the petitioner might continue to contract with a minority for the very purpose (as well as with the necessary effect) of destroying the membership of the respondent and increasing the membership of company unions or minority groups. Thus the prohibition in the decree may be rested exclusively on those paragraphs of the Railway Labor Act which stipulate that "neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives" (Section 2, Third), and that "No carrier, its officers or agents, shall . . . assist [their employees] in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees . . . or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization . . ." (Section 2, Fourth).

It is not denied that these statutory provisions, to which indeed criminal sanctions are attached, create legally enforceable obligations, *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548. And, of course, it is not suggested that to carry these provisions into effect by a decree restraining the petitioner from making labor agreements is beyond the powers of a court of equity. Compare pp. 71–76, *supra.* We submit, therefore, that with respect to the negative obligation the only issue which merits detailed consideration is whether the application of the statute denies due process.

IV

As Applied to the Petitioner the Railway Labor Act Does not Violate the Fifth Amendment

The petitioner contends that both the affirmative (Br. 30–36) and the negative (Br. 37) portions of the decree deprive it of liberty and property without due process of law in violation of the Fifth Amendment. In answering this contention we shall, as heretofore, discuss first the affirmative and then the negative obligation, and in each discussion we shall in turn consider (1) to what extent, if at all, the petitioner is deprived of liberty or property and (2) whether the deprivation, if any, is without due process of law.

A. THE AFFIRMATIVE OBLIGATION DOES NOT DEPRIVE THE PETITIONER OF LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW

In our discussion of the scope of the affirmative portion of the decree, pp. 43–44, *supra,* we have already pointed out that under it the obligation of the carrier is merely to afford to the duly designated representative of its employees an opportunity to be heard on matters which the representative wishes to present, and to take up with the duly designated representative such contractual proposals as the carrier itself determines to offer as the basis of a collective bargaining contract. The petitioner is *not* placed under a duty to enter into a particular agreement, to agree upon particular terms, or to make any contract whatsoever. So the decree has been construed by both lower courts. (R. 274–275, 333.)

1. THE AFFIRMATIVE OBLIGATION DOES NOT DEPRIVE THE PETITIONER OF LIBERTY OR PROPERTY

We cannot see how this limited mandate can be thought to curtail the petitioner's liberty or to take its property. The petitioner does not claim that it is an interference with its liberty for its employees to have a collective representative.[50] Indeed, it has long been recognized that employees are entitled to organize for the purpose of securing the redress of grievances and to promote agreements with em-

[50] The petitioner has repeatedly professed a belief in the principles and practices of collective bargaining. R. 198, fifth full paragraph; R. 232.

ployers relating to rates of pay and conditions of work. *American Steel Foundries* v. *Tri-City Central Trades Council,* 257 U. S. 184, 209." *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, 570. Nor does the petitioner claim that it has a right to select for its employees this representative of theirs.[51] Of course, it would be preposterous for one principal to claim the right to choose for another principal that principal's agent. Such a suggestion would run counter to accepted rules of agency, would make impossible any genuine bargaining between the parties, and would involve the very sort of conduct condemned by the Court in the *Texas & New Orleans* case. "Freedom of choice in the selection of representatives on each side of the dispute is the essential foundation of the statutory scheme." 281 U. S. 569.

The petitioner's position seems to be (1) that against its will it is being forced to have "business relations" which under the Constitution it is at liberty to refuse (Br. 32), and (2) that it is being forced to listen to contractual proposals although under the Constitution it "cannot be compelled to take the ultimate step represented by the agreement of contract." (Br. 31–32.)

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[51] In the "Sasser statement" the petitioner acknowledges that its employees "are entirely free to exercise their choice of representatives, free from fear or favor from their employer." (R. 199.)

To the first point a complete answer is that the petitioner has already of its own volition, and without compulsion from any source, chosen to have "business relations" with those whom it employs. When the employees' representative meets with the petitioner he comes only on their behalf and comes to discuss only such matters as arise out of an already subsisting business relationship. These meetings may take some of the time of petitioner's officers, but they will take less time than if the employees came individually or *en masse*; and at any rate no one suggests that this consumption of time rises to the dignity of an invasion of the petitioner's constitutional rights.

To the second point we have already given one answer, pp. 75–76, *supra*. The process of treating is preliminary not merely to a possible contract, but also to mediation and voluntary arbitration. Another answer lies in the obvious difference in character between a requirement that a person confer with another and a requirement that he contract with that other. One who confers, unlike one who contracts, is not bound as to any future conduct. His future freedom of action is not thereby restrained.[52]

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[52] Of course if the petitioner goes further than the decree requires and in fact enters into a collective bargaining contract, its freedom of action thereafter will be restrained to some extent. But that will be a consequence of voluntary, uncoerced action on the carrier's part. It is, moreover, a universal consequence of every contract. "To bind, to restrain, is of their very essence." *Chicago Board of Trade* v. *United States*, 246 U. S. 231, 238.

A third answer goes even deeper. The petitioner mistakenly assumes that in order to determine whether a person's liberty is curtailed by a decree or statute, the Court will consider not merely what the person is actually required to do, but what he may voluntarily do after he satisfies the requirement.

2. IF THE AFFIRMATIVE OBLIGATION DOES DEPRIVE THE PETITIONER OF LIBERTY OR PROPERTY, THE DEPRIVATION IS NOT WITHOUT DUE PROCESS OF LAW

Although we do not believe that the affirmative obligation in any way does deprive the petitioner of liberty or property, we submit that so far as any deprivation can be discovered, it is not unreasonable, arbitrary or lacking in due process.

In disposing of a somewhat similar point in *Associated Press* v. *National Labor Relations Board,* U. S. Sup. Ct., Oct. Term, 1936, No. 365, pages 94–95, we have already discussed the principle that liberty of contract is not absolute (*Nebbia* v. *New York,* 291 U. S. 502; *Norman* v. *Baltimore & Ohio R. Co.,* 294 U. S. 240), and have reviewed applications of that principle to the employer-employee relationship. Instead of covering the argument and the authorities again, it will be convenient to take as a summary of that whole discussion the following quotation from the *Texas and New Orleans* case (281 U. S. 548, 570):

> . . . Congress may facilitate the amicable settlement of disputes which threaten the

> service of the necessary agencies of interstate transportation. In shaping its legislation to this end, Congress was entitled to take cognizance of actual conditions and to address itself to practicable measures. . .

That quotation has peculiar relevance here. The affirmative obligation to treat was imposed only after a study of "actual conditions". Congress was informed that by disputing the credentials of, and declining to meet with, representatives of their employees, carriers were promoting industrial disputes.[53] In the face of this evil, which as this Court has already observed "often seriously affected the relations between the companies and their employees in the past and is often encountered on the very threshold of controversies between them" (*Pennsylvania R. R. Co.* v. *United States Railroad Labor Board*, 261 U. S. 72, 83), Congress devised machinery intended to "facilitate the amicable settlement of [these] disputes." In this machinery the obligation imposed upon the carrier to treat with the representative of its employees has a double function: first, it gives assurance that there

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[53] As to the situation in the railroad industry in particular see the testimony of George M. Harrison, in the hearings held by the House Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess., on H. R. 7650, pp. 78, 79, quoted in respondent's brief, pages 27–29. As to the situation in industry in general see *Monthly Labor Review*, July 1934, p. 75; *ibid*, January 1936, p. 162, where the data show (what is generally admitted) that an employer's refusal to "recognize" and treat with employee representatives is one of the most frequent causes of industrial strife.

will be conferences between the parties before either of them takes precipitate action; and, second, as the lower court has carefully shown (R. 317–318, 333–334), it provides a starting point for the mechanism of mediation and arbitration, if negotiation fails.

Viewed in this setting, the obligation is not arbitrary but is clearly designed to maintain industrial peace on the railroads. And so viewed it cannot be said to lack due process. It is surely not unreasonable to impose upon a carrier a duty to listen and consider the complaints and proposals of employees, presented through their representatives, rather than to leave industrial strife the only form of expression certain to reach the carrier's attention.

Indeed if there were any doubt as to the reasonableness of the conference method, or its effectiveness in eliminating industrial strife, it would be necessary only to turn to the reports of the National Mediation Board issued since the passage of the 1934 amendments to the Railway Labor Act. In the *First Annual Report*, for the year ended June 30, 1935, the Board notes that (p. 8):

> We are pleased to report that during the year there were no strikes in the railroad industry * * * But there has been no lack of labor disputes in the railroad industry. It differs from other industries only in that its disputes are amicably adjusted with the aid of the agencies set up by the act.

And in its *Second Annual Report,* for the year ended June 30, 1936, it is stated (p. 1) that:

> The peaceful adjustment of labor disputes on the railroads that has been maintained since the enactment of the Railway Labor Act in 1926 has not only been continued under the amended law but there has developed a broader spirit of cooperation between men and management that gives promise of an ever increasing tendency to settle disputes on the several properties by the parties themselves without the necessity of intervention by Government agencies.
>
> With the exception of the hasty action on a small industrial railroad of less than 40 employees, who, before ceasing work failed to request mediation in keeping with the intent of the law, there was no strike and no interruption of railroad service on account of labor disputes. All differences were settled peacefully either directly between men and management or by the agencies provided by the Railway Labor Act.
>
> The outstanding manner in which peace has been maintained on the railroads would be no credit to the industry if serious differences did not constantly arise between the carriers and their employees similar to the disputes that break out in strikes in other industries. The fact is, however, that railroads are no different from other industries in the number and character of labor disputes that they have. * * *

B. THE NEGATIVE OBLIGATION DOES NOT DEPRIVE THE PETITIONER OF LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW

In our discussion of the scope of the negative portion of the decree, pp. 44–52, *supra,* we have already pointed out that under it the carrier is restrained merely from making with others than the duly designated representative "labor agreements" relating to rates of pay, rules, or working conditions. The petitioner is *not* restrained in the normal exercise of its right to select or discharge employees. (R. 333.) No part of the decree (a) involves or even sanctions the "closed-shop", (b) prevents any employee or group of employees from presenting grievances "in the usual manner", "in person, by counsel, or by other representatives", or (c) prohibits the petitioner from negotiating with the respondent a labor agreement under which special compensation or consideration will be given to individual employees or groups of employees upon the basis of special skill, seniority or other considerations. See pp. 44–52, *supra.*

1. THE NEGATIVE OBLIGATION DOES NOT DEPRIVE THE PETITIONER OF LIBERTY OR PROPERTY

The petitioner's brief suggests that by this prohibition the carrier is deprived of the right to bargain or contract with individual employees or minorities. (Br. 37.) In presenting this objection the brief makes the highly theoretical assumption

that in the absence of this decree and this Act this carrier would consider minority contracts, for different groups working at the same tasks and in the same place. We submit that this assumption is so plainly contrary to the facts, and so evidently theoretical as to have no merit.

The record in this case shows that the petitioner has for many years negotiated with only one representative on the subject of rates of pay, rules, and working conditions for each craft or class.[34] It has not contracted with minorities and has not manifested any desire to do so in the future. When individuals seek jobs they merely fill out applications to be hired under standard conditions; they do not sign or negotiate any other contracts. (R. 185, 252–253.)

What is true of the petitioner is generally true of the railroad industry. Complete records of all railroads, kept by the National Mediation Board,

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[34] The petitioner stated that "on October 1st, 1922, the shop employees of The Virginian Railway Company organized the Mechanical Department Association, with which *all* past negotiations pertaining to rates of pay, rules and working conditions, have been conducted." (R. 200.) [Italics added.] See also Rule 112 (a) of the existing contract between the petitioner and the Mechanical Department Association which provides (R. 248) that:

"The right of employes to be consulted prior to a decision of the Management adversely effecting [*sic*] their wages or working conditions is hereby agreed to. This right or [*sic*] participation shall be deemed adequately complied with if and when representatives of a majority of the employes of each of the several classes specified in this agreement shall have conferred with the Management."

pursuant to the express mandate of Section 5, Third, (e) of the Act (see footnote 32, page 46, *supra*), show that carriers do not customarily have more than one standard of rates of pay, rules, and working conditions for any particular craft or class. Indeed, multiple contracts would be impractical. The announcement by a carrier of rates of pay, seniority rules, or other rules with respect to working conditions in any craft or class (whether that announcement results from a unilateral decision of the carrier, or from a bilateral "labor agreement") is in fact a formulation of *operating* rules.[55] As such it must be single in order to be integrated with and adjusted to labor rules specified for every other craft or class. Otherwise the railroad system as a whole would not function with the necessary precision and dispatch.

Moreover, aside from the interlocking character of labor regulations, it is plain that the practical reasons why, from the point of view of its own self-interest, a carrier will not tolerate the existence of more than one set of rules or rates for a craft are that (1) existence of a double or triple standard would promote jealousies, injustices and intrigue and would be a constant menace to industrial peace, (2) different seniority arrangements for different groups are mutually inconsistent and

[55] It is interesting to note that in collective contracts in the railroad industry each contractual provision is always referred to as a rule. An example is furnished by the contract in this record. (R. 244–249.)

attempts to reconcile or to interweave them would present great practical difficulties, (3) multiple contracts would complicate the financial accounting for, and the supervision of, each craft, and (4) it would be virtually impossible to lay down any principle determining under which set of rules the carrier should place new men subsequently hired.

In the face of this practical situation we submit that the argument in petitioner's brief that the carrier is by the decree in this case deprived of the liberty to make contracts with minorities lacks realism. The petitioner would never exercise the liberty, no matter how long it possessed it.

We do not understand that the petitioner attempts to argue that some of the petitioner's employees will, as a consequence of the decree, be deprived of liberty or property. The petitioner apparently recognizes that a carrier cannot rely upon alleged infringements of its employees' rights, *Jeffrey Mfg. Co.* v. *Blagg,* 235 U. S. 571, 576; *Erie R. Co.* v. *Williams,* 233 U. S. 685, 697; *Rail & River Coal Co.* v. *Ohio Industrial Commission,* 236 U. S. 338, 349; *Premier-Pabst Sales Co.* v. *Grosscup,* 298 U. S. 226, 227; *Heald* v. *District of Columbia,* 259 U. S. 114, 123. In *Jeffrey Mfg. Co.* v. *Blagg,* 235 U. S. 571, 576, this Court declared:

> Much of the argument is based upon the supposed wrongs to the employe, and the

> alleged injustice and arbitrary character of the legislation here involved as it concerns him alone. * * * No employee is complaining of this act in this case. The argument based upon such discrimination, so far as it affects employees by themselves considered, cannot be decisive; for it is the well-settled rule of this court that it only hears objections to the constitutionality of laws from those who are themselves affected by its alleged unconstitutionality in the feature complained of. *Southern Railway* v. *King*, 217 U. S. 524, 534; *Engel* v. *O'Malley*, 219 U. S. 128, 135; *Standard Stock Food Co.* v. *Wright*, 225 U. S. 540, 550; *Yazoo & Mississippi Valley R. R.* v. *Jackson Vinegar Co.*, 226 U. S. 217, 219; *Rosenthal* v. *New York*, 226 U. S. 260, 271; *Darnell* v. *Indiana*, 226 U. S. 390, 398; *Plymouth Coal Co.* v. *Pennsylvania*, 232 U. S. 531, 544; *Missouri, Kansas & Texas Ry.* v. *Cade*, 233 U. S. 642, 648.

The decree below is not directed to any employee. And the failure of any of the employees to intervene or appear as *amici curiae* in any court to oppose the decree warrants an inference that none of them regards himself as prejudiced by it.

But if a claim were made that the individual employee was deprived of liberty, such claim would be without substance. It is true that the decree creates a legal impediment which prevents the petitioner from conferring on the limited

topic [56] of labor agreements with any individual who has not been designated as a craft representative. But so far as any individual employee is concerned this legal impediment is only a duplication of the practical impediments which already existed and to which we have already referred. A minority group on this or any other road would be unlikely ever to get a special contract applied to him alone. From the viewpoint of an individual, whether in the majority or the minority, liberty consists in an opportunity (1) to participate on equal terms in the choice of a spokesman, and (2) to share without discrimination in the benefits of such contract as may be negotiated. The Railway Labor Act (see particularly Section 2, paragraphs Third, Fourth, and Ninth) and the decree in this case assure him of these opportunities. Thus they give to him new liberties, without curtailing any liberty that he ever exercised before.

2. IF THE NEGATIVE OBLIGATION DOES DEPRIVE THE PETITIONER OF LIBERTY OR PROPERTY, THE DEPRIVATION IS NOT WITHOUT DUE PROCESS OF LAW

We have already pointed out, pp. 76–77, *supra*, that the negative obligation may be supported either as an application of Section 2, Ninth and

[56] It will be recalled that the carrier can discuss with any individual employee or group of employees any grievances presented "in the usual manner" "in person" or by representative. See pp. 50–51, *supra*. It will also be recalled that the carrier is at liberty to make individual hirings. See pp. 45–51, *supra*.

Second, or as an application of Section 2, Third and Fourth. Whichever interpretation is taken, we submit that the obligation is not unreasonable, arbitrary or lacking in due process.

Viewed as an application of Section 2, Ninth and Second, the negative obligation has all the justifications to which reference has already been made in the due process discussion of the affirmative obligation, pp. 84–88, *supra*. The machinery established by the Act will not settle disputes if there are numerous conflicting conferences between a carrier and various groups of its employees or individuals working at cross purposes. The prohibition of multiple contracts has also independent justification.

A single bargain as to rates of pay, rules and working conditions promotes peace. An attempt to negotiate or maintain multiple or separate contracts with varying standards would introduce not merely confusion but discord and dissatisfaction. To the group that has the less favorable terms, the other contract appears as discriminatory. To the group that has the more favorable terms, the other contract appears as subversive—a potential threat to its own standards.

Moreover, the mere presence of two or more groups actively functioning is bound to lead each to seek new adherents among newcomers and among those already employed. At best this means proselytism and internecine struggles in which the bargaining power of the employees and, what is

more important, their collective responsibility are reduced. Meetings with the carrier, or appearances before mediatory or arbitral agencies are likely to end in confusion. At worst the situation is exploited by unscrupulous carriers. Favoritism is practiced. An easy means is supplied for coercing those whom the carrier knows belong to one group to abandon their present organization for another association regarded by the carrier as preferable.

To prohibit multiple contracts is to lessen or eliminate such disputes and is therefore obviously germane to the fundamental purpose of the Railway Labor Act—the maintenance of industrial peace upon the railroads of this country.

The reasonableness of the prohibition against multiple contracts, on grounds such as those now advanced, and others earlier stated, pp. 89–93, *supra,* has long been recognized. The United States Railroad Labor Board established under the Transportation Act of 1920, in formulating guiding principles for the settlement of labor disputes on the railroads, recognized the right of the representative of a majority of the craft to make an agreement covering the whole craft. Principle 15 of Decision No. 119.[57] In *Pennsylvania R. R. Co.* v.

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[57] See U. S. Railroad Labor Board Decisions, Vol. II, pp. 87, 96, Decision No. 119, Principle 15, which reads as follows:

"The majority of any craft or class of employees shall have the right to determine what organization shall represent members of such craft or class. Such organization shall have the right to make an agreement which shall apply to all

Labor Board, 261 U. S. 72, 85, this Court held that the rule (while not compulsory under the system then in existence), was "necessary in order that conferences should be properly begun." If such a rule is *necessary* to enable a voluntary collective bargaining system to function, and if (as the *Texas and New Orleans* case holds), a voluntary collective bargaining system is an appropriate means for achieving peace on the railroads, then it follows that such a rule (i. e. majority rule) is reasonable and not in violation of due process.

The petitioner implies (Br. 37) that in some way *Carter* v. *Carter Coal Co.,* 298 U. S. 238, 310–312 is opposed to this result. But even cursory consideration will show that there is no opposition, if indeed there is any relevance. In the *Carter* case there were under review provisions of the bituminous Coal Conservation Act which imposed a penal tax upon coal producers who failed to abide by such maximum hour and minimum wage standards as might be agreed upon by producers of two-thirds of the tonnage and representatives of more than one-half of the miners in a given area. This Court held that these provisions violated the due process clause of the Fifth Amendment because the regulation of hours and wages which they envis-

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employees in such craft or class. No such agreement shall infringe, however; upon the right of employees not members of the organization representing the majority to present grievances either in person or by representatives of their own choice."

aged was "necessarily a governmental function" which could not be delegated to private persons, particularly "private persons whose interests may be and often are adverse to the interests of others in the same business". (298 U. S. 311.)

So far as this petitioner itself is concerned the doctrine of the *Carter* case is entirely irrelevant. This petitioner is not required by the decree or statute to abide by any other person's views as to hours, wages, or other working conditions. No one can prevent the carrier from setting such schedules as it chooses. If, by chance, it chooses to set them cooperatively, that is by collective bargaining, those schedules become purely matters of private contract, not buttressed by criminal, penal, or tax sanctions.

Although the rights and liberties of employees of the petitioner are not in issue in this case, see page 92, *supra,* we may further add that so far as they are concerned the doctrine of the *Carter* case is also irrelevant. It seems to be suggested that an individual worker is denied due process because the governmental power to regulate his hours and wages is delegated to a majority of his co-workers. To this the short answer is that the power exercised by the majority is not a governmental power, and accordingly is not buttressed by penalties. Moreover, the ambit of the bargaining power exercised by the majority under this statute does not go beyond the power that might be exercised in the absence of the statute: as for example by closed

shop contracts which in many states are lawful. Furthermore, the majority's power covers so narrow an area that it does not appreciably narrow free choice. Finally it may be noted that the exclusion from the process of setting standards is as a practical matter not likely to prejudice any individual worker even if he does not change his job. Usually collective bargaining gains more for him than individual bargaining; and it is rare that the representative in whose very selection he has participated develops interests adverse to his own.

Analogous situations in which, in the interest of the public, a minority of those having a common interest are required to accept non-discriminatory terms proposed by a majority of the group, are considered in *Fallbrook Irrigation Co.* v. *Bradley,* 164 U. S. 112; *Wurtz* v. *Hoagland,* 114 U. S. 606; *Doty* v. *Love,* 295 U. S. 64; *Continental Ill. Nat. Bk. & Trust Co.* v. *Chicago, R. I. & P. Ry. Co.,* 294 U. S. 648, 663; *Lauro et al.* v. *Barker et al.,* Oct. Term, 1936, No. 374, Jan. 18, 1937.

So far we have discussed the reasonableness of the negative portion of the decree solely in connection with Section 2, Ninth and Second. But it may also be supported as a reasonable method of carrying out those provisions of the Act which prohibit interference with employees in the free choice of representatives. (Section 2, Third and Fourth.) See pp. 77–80, *supra.*

In the *Texas and New Orleans* case this Court held that the Fifth Amendment was not violated by

decrees, (enforcing Section 2, Third, as it then stood), which required a carrier to dissolve the company union and recognize only the duly designated representative. (See 281 U. S., at 557.) Here the lower court has required the petitioner to treat with the duly designated representative and to contract with no one else. The pattern of the decree is slightly different; but the objective sought is the same and the particular remedy differs merely as the carrier's conduct differs. We, therefore, submit that so far as concerns the question whether the negative obligation deprives the petitioner of liberty or property without due process, *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, is a controlling precedent and no consideration *de novo* is requisite.

C. THE AFFIRMATIVE AND NEGATIVE OBLIGATIONS ARE SEPARABLE

Throughout our discussion of this Point IV and the preceding Point III we have sharply distinguished between the affirmative obligation and the negative obligation. We have contended that each is authorized by the statute and the Constitution. But, if we are mistaken and one is held either to be unsupported by legally enforceable provisions of the statute or to be lacking in due process, we maintain that the other is separable and valid.

It is clear that the trial court regarded the obligations as separate. This is shown by its para-

graphing of the decree. (R. 282–283.) It is also evident from our prior analysis that the two obligations may be rested on entirely different statutory provisions. All the statutory provisions form valuable adjuncts to the perfect operation of the Railway Act, but each serves a slightly different purpose which has independent value; thus, the requirement that the carrier treat has as its chief purpose the setting in motion of the processes of deliberation and amicable adjustment; whereas the requirement that the carrier shall not make a labor agreement with another than the craft representative is primarily prophylactic, and designed to prevent the carrier from undermining the authority of the representative, from thwarting the employees in their free choice of a representative, and from discriminatory action.

Congress would have intended the negative obligation to be enforced if the affirmative could not, and *vice versa.* This is shown not merely by the separability clause, Section 11 of the Act, which is like the separability clause discussed in the brief filed by the respondent in *Associated Press* v. *National Labor Relations Board,* Oct. Term, 1936, No. 365, pp. 108, *et seq.,* but above all, by *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, in which an obligation roughly paralleling the negative obligation here involved was enforced without adjudicating the validity of other obligations under the statute. In view of the *Texas* case there can be no question that

each obligation is capable of independent enforcement. Moreover, each is of material value in maintaining that peace on the railway systems of this country that has ever since the 1934 amendments to the Railway Labor Act been virtually unbroken. See pp. 87–88, *supra*.

V

The Norris-LaGuardia Act Does Not Prohibit the Granting of the Injunction Issued Below

Petitioner urges that the injunction issued by the District Court violates several provisions of the Norris-LaGuardia Anti-Injunction Act (Act of March 23, 1932, c. 90, 47 Stat. 70, U. S. C., Title 29, §§ 101–115). It will be clear from a brief reference to the provisions of the Act relied upon that there is no merit to petitioner's contention.

(a). *Section 4 (e)*. It is claimed that the decree violates Section 4 (e) of the Norris-LaGuardia Act, which provides that in any case involving or growing out of a labor dispute no injunction shall be issued prohibiting "giving publicity to the existence of, or the facts involved in, any labor dispute." The decree does not in terms prohibit the giving of publicity to the facts of a dispute—but petitioner argues that the provision restraining it from "discouraging its Mechanical Department employees from becoming or remaining members of the" Federation has the effect of preventing it from making such statements as the Sasser

statement (R. 197–201) to its employees. The decree thus only is alleged to prohibit such statements as would influence the designation of representatives by the employees. It is clear that the issuance of statements to one's employees with the purpose of discouraging them from joining a particular labor organization does not constitute "merely giving publicity to the existence of, or the facts involved in, any labor dispute." "Giving publicity" obviously refers to the making public of information, not to attempts to influence the action of the employees involved in the dispute. Moreover, the Sasser statement, with its derogatory references to the American Federation of Labor and its espousal of the company union, can hardly be regarded as a publication merely of "the existence of or the facts involved in" a labor dispute.

The Norris-LaGuardia Act was not designed to enable employers to interfere with their employees' free choice of representatives under the guise of "giving publicity" to facts. The declaration of policy in Section 2 of the Norris-LaGuardia Act shows clearly that a primary purpose of that Act, as well as of the Railway Labor Act, was to safeguard the right of employees to select their own representatives.[58]

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[58] Section 2 of the Norris-LaGuardia Act declares the public policy of the United States as follows:

"Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to

(b). Sections 6 and 7 (a). These sections provide in substance that no person, association, or organization shall be held responsible for the unlawful acts of another, including the acts of its officers or agents, unless such person, association, or organization shall have actually authorized or ratified the same.[59] Relief in this case was sought against the railway company for acts which were necessarily those of its officers and agents. The trial court found that the petitioner itself had

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protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, *it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection;* therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted." [Italics supplied.]

[59] The pertinent provisions of the sections read as follows:

"Section 6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

"Section 7 (a). * * * no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;"

committed the unlawful acts, through its officers, agents, and servants (R. 182). This finding was clearly supported by the evidence. To take only one example, petitioner's own officers testified that the Sasser statement was passed upon by the President of the Company, its General Solicitor, the Superintendent of Motive Power, and the Assistant to the President having labor matters under his jurisdiction (R. 181, 155).

(c). *Section 9.* This section reads as follows:

> No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute *shall include only a prohibition of such specific act or acts* as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein. [Italics supplied.] (March 23, 1932, c. 90, § 9, 47, Stat. 72.)

Petitioner claims that the italicized word "prohibition" was intended to preclude the granting of *mandatory* injunctions in all cases growing out of labor disputes. But "the purpose of this provision" as the Circuit Court of Appeals found (R. 322), "was not to forbid the granting of mandatory injunctions * * * but to limit the scope

of all injunctions in labor cases to matters specifically alleged in the bill and supported in the findings of fact of the court." The evil at which the statute was directed was not the granting of injunctions containing an affirmative command, but the issuing of "blanket injunctions" (R. 323) broader in scope than were warranted by the facts alleged and proved.

Although the Court can dispose of the questions raised under the Norris-LaGuardia Act on the ground that the provisions of the Act were not violated, the Government wishes to suggest a broader basis of decision. This case was brought to enforce certain provisions of the Railway Labor Act. These provisions cannot be enforced if the Norris-LaGuardia Act be regarded as preventing the issuance of mandatory injunctions, or as protecting, as the giving of publicity, the making of influential statements to employees. It clearly was not the purpose of Congress in passing the Anti-Injunction Act in any degree to render unenforceable a specific federal statute designed to achieve the same goal—the protection of the employees' freedom of association. The Norris-LaGuardia Act establishes a general rule applicable to the granting of injunctions in cases growing out of labor disputes. The amended Railway Labor Act, subsequently enacted, imposes specific statutory obligations, some of which are enforceable only by injunction.[60] Under

[60] Section 6 and Section 10, as well as Paragraph Ninth of Section 2, are only enforceable by injunction. See Point III, pp. 40–80, *supra*.

such circumstances, it seems clear that Congress would not have intended the operation of a statute passed to deal with a *specific* problem to be impeded by the application of an earlier law of more general application.[61] See *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S., at 571, in which a similar argument was rejected. *Cf. Callahan* v. *United States*, 285 U. S. 515; *Ex parte United States*, 226 U. S. 420, 424; *Rodgers* v. *United States*, 185 U. S. 83, 87–89.[62]

CONCLUSION

It is respectfully submitted that the judgment of the court below should be affirmed.

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[61] Section 8 of the Act of June 21, 1934, amending the Railway Labor Act, provides that "All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed."

[62] See *International Alliance* v. *Rex Theatre Co.*, 73 F. (2d) 92, in which the Circuit Court of Appeals for the 7th Circuit held that the subsequently enacted and specific provisions of the National Industrial Recovery Act took precedence over the Norris-LaGuardia Act.

APPENDIX

The Railway Labor Act of May 20, 1926, c. 347, 44 Stat. 577, as amended June 21, 1934, c. 691, 48 Stat. 1185, U. S. C., Tit. 45, §§ 151–163. Provisions added to the Act as enacted in 1926 by the 1934 amendments are italicized. Provisions deleted by the 1934 amendments are stricken.

DEFINITIONS

SECTION 1. When used in this Act and for the purposes of this ~~Act:~~ *Act*—

First. The term "carrier" includes any express company, sleeping-car company, ~~and~~ ~~any~~ carrier by railroad, subject to the Interstate Commerce Act, ~~including all floating equipment such as boats, barges, tugs, bridges and ferries; and other transportation facilities used by or operated in connection with any such carrier by railroad, and any receiver or any other individual or body, judicial or otherwise, when in the possession of the business of employers or carriers covered by this Act~~ *and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or*

body, judicial or otherwise, when in the possession of the business of any such "carrier": Provided, however, That the term "carrier" shall not include any street, interurban, or suburban electric ~~railway~~ *railway,* unless such ~~a~~ railway is operating as a part of a general steam railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive ~~power;~~ *power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso*

Second. The term "Adjustment Board" means ~~one of the boards of adjustment provided for in this Act;~~ *the National Railroad Adjustment Board created by this Act.*

Third. The term ~~"Board of Mediation"~~ *"Mediation Board"* means the ~~Board of Mediation~~ *National Mediation Board* created by this ~~Act;~~ *Act.*

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (sub-

ject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however,* That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

~~Sixth.~~ *Seventh.* The term "district court" includes the Supreme Court of the District of Columbia; and the term "circuit court of appeals" includes the Court of Appeals of the District of Columbia.

This Act may be cited as the "Railway Labor Act".

GENERAL PURPOSES

SEC. 2. *The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among em-*

ployees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

GENERAL DUTIES

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier *or carriers* and its *or their* employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the *carrier or* carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purposes of this Act, shall be designated by the respective parties ~~in such manner as may be provided in their corporate~~

~~organization or unincorporated association, or by other means of collective action,~~ without interference, influence, or coercion ~~exercised~~ by either party over the ~~self-organization or~~ designation of representatives by the other; *and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.*

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees,

assessments, or other contributions: Provided, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this Act, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

~~Fourth.~~ *Sixth.* In case of a dispute between a carrier *or carriers* and its *or their* employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier *or carriers* and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided,* (1) That the place so specified shall be situated upon the ~~railroad~~ line of the carrier involved ~~unless~~ *or as* otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed

twenty days from the receipt of such notice: *And provided further*, That nothing in this ~~paragraph~~ *Act* shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

~~Fifth. Disputes concerning changes in rates of pay, rules, or working conditions shall be dealt with as provided in section 6 and in other provisions of this Act relating thereto.~~

Seventh. No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

Eighth. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing,

within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

Tenth. The willful failure or refusal of any carrier, its officers or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1.000 nor more than $20,000 or imprisonment

for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: Provided, That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

~~Boards~~ *National Board* of Adjustment —Grievances—Interpretation of Agreements

Sec. 3. ~~First. Boards of adjustment shall be created by agreement between any carrier or group of carriers, or the carriers as a whole, and its or their employees.~~

~~The agreement—~~

(~~a~~) ~~Shall be in writing;~~

(~~b~~) ~~Shall state the group or groups of employees covered by such adjustment board;~~

(e) Shall provide that disputes between an employee or group of employees and a carrier, growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, that the dispute shall be referred to the designated adjustment board by the parties, or by either party, with a full statement of the facts and all supporting data bearing upon the dispute;

(d) Shall provide that the parties may be heard either in person, by counsel, or by other representative, as they may respectively elect, and that adjustment boards shall hear and, if possible, decide promptly all disputes referred to them as provided in paragraph (c). Adjustment boards shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in the disputes;

(e) Shall stipulate that decisions of adjustment boards shall be final and binding on both parties to the dispute; and it shall be the duty of both to abide by such decisions;

(f) Shall state the number of representatives of the employees and the number of representatives of the carrier or carriers on the adjustment board, which number of representatives, respectively, shall be equal;

(g) Shall provide for the method of selecting members and filling vacancies;

(h) Shall provide for the portion of expenses to be assumed by the respective parties;

(i) Shall stipulate that a majority of the adjustment board members shall be competent to make an award, unless otherwise mutually agreed;

~~(j) Shall stipulate that adjustment boards shall meet regularly at such times and places as designated; and~~

~~(k) Shall provide for the method of advising the employees and carrier or carriers of the decisions of the board.~~ *First. There is hereby established a Board, to be known as the "National Railroad Adjustment Board", the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided—*

(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act.

(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees or through an officer or officers designated for that purpose by such board, trustee or trustees or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one representative on any division of the Board.

(c) The national labor organizations, as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the

division on which each member shall serve; but no labor organization shall have more than one representative on any division of the Board.

(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after the passage of this Act, in case of any original appointment to office of a member of the Adjustment Board, or in case of a vacancy in any such office within thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjust-

ment Board to select a representative. Such representative, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member, investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 2 hereof and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall con-

sist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car men, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

(i) The disputes between an employee or group of employees and a carrier or carriers growing out

of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: Provided, however, That final awards as to any such dispute must be made by the entire division as hereinafter provided.

(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as "referee", to sit with the division as a member thereof and make an

award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this Act for the appointment of arbitrators and shall fix and pay the compensation of such referees.

(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

(n) A majority vote of all members of the division of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it.

(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay to the employee the sum to which he

is entitled under the award on or before a day named.

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board.

(q) All actions at law based upon the provisions of this section shall be begun within two years from

the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

(r) The several divisions of the Adjustment Board shall maintain headquarters in Chicago, Illinois, meet regularly, and continue in session so long as there is pending before the division any matter within its jurisdiction which has been submitted for its consideration and which has not been disposed of.

(s) Whenever practicable, the several divisions or subdivisions of the Adjustment Board shall be supplied with suitable quarters in any Federal building located at its place of meeting.

(t) The Adjustment Board may, subject to the approval of the Mediation Board, employ and fix the compensations of such assistants as it deems necessary in carrying on its proceedings. The compensation of such employees shall be paid by the Mediation Board.

(u) The Adjustment Board shall meet within forty days after the approval of this Act and adopt such rules as it deems necessary to control proceedings before the respective divisions and not in conflict with the provisions of this section. Immediately following the meeting of the entire Board and the adoption of such rules, the respective divisions shall meet and organize by the selection of a chairman, a vice chairman, and a secretary. Thereafter each division shall annually designate one of its members to act as chairman and one of its members to act as vice chairman: Provided, however, That the chairmanship and vice-chairmanship of any division shall alternate as between the groups, so that

both the chairmanship and vice-chairmanship shall be held alternately by a representative of the carriers and a representative of the employees. In case of a vacancy, such vacancy shall be filled for the unexpired term by the selection of a successor from the same group.

(v) Each division of the Adjustment Board shall annually prepare and submit a report of its activities to the Mediation Board, and the substance of such report shall be included in the annual report of the Mediation Board to the Congress of the United States. The reports of each division of the Adjustment Board and the annual report of the Mediation Board shall state in detail all cases heard, all actions taken, the names, salaries, and duties of all agencies, employees, and officers receiving compensation from the United States under the authority of this Act, and an account of all moneys appropriated by Congress pursuant to the authority conferred by this Act and disbursed by such agencies, employees, and officers.

(w) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members of such regional boards shall be designated in keeping with rules devised for this purpose by the carrier members of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Adjustment Board. Any such regional board shall, during the time for which it is appointed, have the same authority to conduct hearings, make

findings upon disputes and adopt the same procedure as the division of the Adjustment Board appointing it, and its decisions shall be enforceable to the same extent and under the same processes. A neutral person, as referee, shall be appointed for service in connection with any such regional adjustment board in the same circumstances and manner as provided in paragraph (1) hereof, with respect to a division of the Adjustment Board.

~~Second. Nothing in this Act shall be construed to prohibit an individual carrier and its employees from agreeing upon the settlement of disputes through such machinery of contract and adjustment as they may mutually establish.~~

Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board.

~~Board of Mediation~~ *National Mediation Board*

Sec. 4. First. *The Board of Mediation is hereby abolished, effective thirty days from the approval of this Act and the members, secretary, officers, assistants,*

employees, and agents thereof, in office upon the date of the approval of this Act, shall continue to function and receive their salaries for a period of thirty days from such date in the same manner as though this Act had not been passed. There is hereby established, as an independent agency in the executive branch of the Government, a board to be known as the ~~Board of Mediation~~ *"National Mediation Board"*, ~~and~~ to be composed of ~~five~~ *three* members appointed by the President, by and with the advice and consent of the Senate, *not more than two of whom shall be of the same political party.* The terms of office of the members first ~~taking office~~ *appointed* shall *begin as soon as the members shall qualify, but not before thirty days after the approval of this Act, and* expire, as designated by the President at the time of nomination, one ~~at the end of the first year, one at the end of the second year, one at the end of the third year, one at the end of the fourth year, and one at the end of the fifth year, after January 1, 1926,~~ *on February 1, 1935, one on February 1, 1936, and one on February 1, 1937.* The terms of office of all successors shall expire ~~five~~ *three* years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. Vacancies in the ~~board~~ *Board* shall not impair the powers nor affect the duties of the ~~board~~ *Board* nor of the remaining members of the ~~board~~ *Board*. ~~A majority~~ *Two* of the members in office shall constitute a quorum for the transaction of the business of the ~~board~~ *Board*. Each member of the ~~board~~ *Board* shall receive a salary at the rate of ~~$12,000~~ *$10,000* per

annum, together with necessary traveling ~~expenses~~ and subsistence expenses, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while away from the principal office of the ~~board~~ *Board* on business required by this Act. No person in the employment of or who is pecuniarily or otherwise interested in any organization of employees or any carrier shall enter upon the duties of or continue to be a member of the ~~board~~ *Board*.

All cases referred to the Board of Mediation and unsettled on the date of the approval of this Act shall be handled to conclusion by the Mediation Board.

A member of the ~~board~~ *Board* may be removed by the President for inefficiency, neglect of duty, malfeasance in office, or ineligibility, but for no other cause.

Second. The ~~board~~ *Mediation Board* shall annually designate a member to act as chairman. The ~~board~~ *Board* shall maintain its principal office in the District of Columbia, but it may meet at any other place whenever it deems it necessary *so to do*. The ~~board~~ *Board* may designate one or more of its members to exercise the functions of the ~~board~~ *Board* in mediation proceedings. Each member of the ~~board~~ *Board* shall have power to administer oaths and affirmations. The ~~board~~ *Board* shall have a seal which shall be judicially noticed. The ~~board~~ *Board* shall make an annual report to Congress.

Third. The *Mediation* Board may (1) appoint such experts and assistants to act in a confidential capacity and, subject to the provisions of the civil-service laws, such other officers and ~~employees, and~~ *employees as are essential to the effective transaction of the work of the Board;* (2) in accordance with the

Classification Act of ~~1923~~ *1923*, fix the ~~salary~~ *salaries* of such experts, assistants, officers, and ~~employees,~~ *employees;* and (3) make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding, and including expenditures for salaries and compensation, necessary traveling expenses and expenses actually incurred for subsistence, and other necessary expenses of ~~boards of arbitration, in accordance with the previsions of section 7~~) *the Mediation Board, Adjustment Board, Regional Adjustment Boards established under paragraph (w) of section 3, and boards of arbitration, in accordance with the provisions of this section and sections 3 and 7, respectively*), as may be necessary for the execution of the functions vested in the Board, ~~or~~ *in the Adjustment Board and* in the boards of arbitration, and as may be provided for by the Congress from time to time. All expenditures of the Board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

Fourth. The Mediation Board is hereby authorized by its order to assign, or refer, any portion of its work, business, or functions arising under this or any other Act of Congress, or referred to it by Congress or either branch thereof, to an individual member of the Board or to an employee or employees of the Board to be designated by such order for action thereon, and by its order at any time to amend, modify, supplement, or rescind any such assignment or reference. All such orders shall take effect forthwith and remain in effect until otherwise ordered by the Board. In conformity with and subject to the order or orders of the Medi-

ation Board in the premises, and [sic] such individual member of the Board or employee designated shall have power and authority to act as to any of said work, business, or functions so assigned or referred to him for action by the Board.

Fifth. All officers and employees of the Board of Mediation (except the members thereof, whose offices are hereby abolished) whose services in the judgment of the Mediation Board are necessary to the efficient operation of the Board are hereby transferred to the Board, without change in classification or compensation; except that the Board may provide for the adjustment of such classification or compensation to conform to the duties to which such officers and employees may be assigned.

All unexpended appropriations for the operation of the Board of Mediation that are available at the time of the abolition of the Board of Mediation shall be transferred to the Mediation Board and shall be available for its use for salaries and other authorized expenditures.

FUNCTIONS OF ~~BOARD OF MEDIATION~~ MEDIATION BOARD

SEC. 5. First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the ~~Board of Mediation~~ *Mediation Board* ~~created by this Act, or the Board of Mediation may proffer its services,~~ in any of the following cases:

(a) A dispute ~~arising out of grievances or out of the interpretation or application of agreements~~ concerning *changes in* rates of pay, rules, or working conditions not adjusted by the parties in conference.

~~and not decided by the appropriate adjustment board;~~

~~(b) A dispute which is not settled in conference between the parties, in respect to changes in rates of pay, rules, or working conditions;~~

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

~~(c) Any other dispute not decided in conference between the parties.~~

The Mediation Board may proffer its services in case any labor ~~dispute~~ emergency is found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable ~~adjustment~~ *settlement* through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act) to induce the parties to submit their controversy to ~~arbitration~~ *arbitration*, in accordance with the provisions of this Act.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

Second. In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this Act, either party to the said agreement, or both, may apply to the ~~Board of Mediation~~ *Mediation Board* for an interpretation ~~as to~~ *of* the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days.

Third. The ~~Board of Mediation~~ *Mediation Board* shall have the following duties with respect to the arbitration of disputes under section 7 of this Act:

(a) On failure ~~of~~ the arbitrators named by the parties to agree on the remaining arbitrator or arbitrators within the time set by section 7 of this Act, it shall be the duty of the ~~Board of Mediation~~ *Mediation Board* to name such remaining arbitrator or arbitrators. It shall be the duty of the Board in naming such arbitrator or arbitrators to appoint only those whom the Board shall deem wholly disinterested in the controversy to be arbitrated and impartial and without bias as between the parties to such arbitration. Should, however, the Board name an arbitrator or arbitrators not so disinterested and impartial, then, upon proper investigation and presentation of the facts, the Board shall promptly remove such arbitrator.

If an arbitrator named by the ~~Board of Mediation~~ *Mediation Board*, in accordance with the provisions of this Act, shall be removed by such Board as provided by this Act, or if such an arbitrator refuses or is unable to serve, it shall be the duty of the ~~Board of Mediation~~ *Mediation Board*, promptly, to select another arbitrator, in the same manner as provided

in this Act for an original appointment by the ~~Board of Mediation~~ *Mediation Board.*

(b) Any member of the ~~Board of Mediation~~ *Mediation Board* is authorized to take the acknowledgment of an agreement ~~of arbitration~~ *to arbitrate* under this Act. When so acknowledged, or when acknowledged by the parties before a notary public or the clerk of a district court or a circuit court of appeals of the United States, such agreement to arbitrate shall be delivered to a member of said ~~board,~~ *Board* or transmitted to said Board, to be filed in its office.

(c) When an agreement to arbitrate has been filed with the ~~Board of Mediation~~ *Mediation Board,* or with one of its members, as provided by this section, and when the said ~~board, or a member thereof,~~ *Board* has been furnished the names of the arbitrators chosen by the parties to the ~~controversy,~~ *controversy* it shall be the duty of the ~~Board of Mediation~~ *Board* to cause a notice in writing to be served upon said arbitrators, notifying them of their appointment, requesting them to meet promptly to name the remaining arbitrator or arbitrators necessary to complete the Board of Arbitration, and advising them of the period within which, as provided by the agreement to arbitrate, they are empowered to name such arbitrator or arbitrators.

(d) Either party to an arbitration desiring the reconvening of a board of arbitration to pass upon any controversy arising over the meaning or application of an award may so notify the ~~Board of Mediation~~ *Mediation Board* in writing, stating in such notice the question or questions to be submitted to such reconvened Board. The ~~Board of Mediation~~ *Mediation Board* shall thereupon promptly communicate

with the members of the Board of Arbitration, or a subcommittee of such Board appointed for such purpose pursuant to a provision in the agreement to arbitrate, and arrange for the reconvening of said Board *of Arbitration* or subcommittee, and shall notify the respective parties to the controversy of the time and place at which the Board, or the subcommittee, will meet for hearings upon the matters in controversy to be submitted to it. No evidence other than that contained in the record filed with the original award shall be received or considered by such reconvened Board or subcommittee, except such evidence as may be necessary to illustrate the interpretations suggested by the parties. If any member of the original Board is unable or unwilling to serve on such reconvened Board or subcommittee thereof, another arbitrator shall be named in the same manner and with the same powers and duties as such original arbitrator.

~~(c) The Interstate Commerce Commission, the Bureau of Labor Statistics, and the custodian of the records, respectively, of the Railroad Labor Board, of the mediators designated in the Act approved June 1, 1898, providing for mediation and arbitration, known as the Erdman Act, and of the Board of Mediation and Conciliation created by the Act approved July 15, 1913, providing for mediation, conciliation, and arbitration, known as the Newlands Act, are hereby authorized and directed to transfer and deliver to the Board of Mediation created by this Act any and all papers and documents heretofore filed with or transferred to them, respectively, bearing upon the settlement, adjustment, or determination of disputes between carriers and their employees or upon mediation or arbitration pro-~~

~~eedings held under or pursuant to the provisions of any Act of Congress in respect to such di utes; and the President is authorized to require the transfer and delivery to the Board of Mediation, created by this Act, of any and all such papers and documents filed with or in the possession of any agency of the Government. The President is authorized to designate a custodian of the records and property of the Railroad Labor Board, until the transfer and delivery of such records to the Board of Mediation and the disposition of such property in such manner as the President may direct.~~

(e) Within sixty days after the approval of this Act every carrier shall file with the Mediation Board a copy of each contract with its employees in effect on the 1st day of April 1934, covering rates of pay, rules, and working conditions. If no contract with any craft or class of its employees has been entered into, the carrier shall file with the Mediation Board a statement of that fact including also a statement of the rates of pay, rules, and working conditions applicable in dealing with such craft or class. When any new contract is executed or change is made in an existing contract with any class or craft of its employees covering rates of pay, rules, or working conditions, or in those rates of pay, rules, and working conditions of employees not covered by contract, the carrier shall file the same with the Mediation Board within thirty days after such new contract or change in existing contract has been executed or rates of pay, rules, and working conditions have been made effective.

(f) The Mediation Board shall be the custodian of all papers and documents heretofore filed with or transferred to the Board of Mediation bearing

upon the settlement, adjustment, or determination of disputes between carriers and their employees or upon mediation or arbitration proceedings held under or pursuant to the provisions of any Act of Congress in respect thereto; and the President is authorized to designate a custodian of the records and property of the Board of Mediation until the transfer and delivery of such records to the Mediation Board and to require the transfer and delivery to the Mediation Board of any and all such papers and documents filed with it or in its possession.

~~PROCEDURE IN CHANGING RATES OF PAY, RULES, AND WORKING CONDITIONS~~

SEC. 6. Carriers and ~~the~~ representatives of the employees shall give at least thirty days' written notice of an intended change *in agreements* affecting rates of pay, rules, or working conditions, and the time and place for *the beginning of* conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. ~~Should changes be requested from more than one class or associated classes at approximately the same time, this date for the conference shall be understood to apply only to the first conference for each class; it being the intent that subsequent conferences in respect to each request shall be held in the order of its receipt and shall follow each other with reasonable promptness.~~ In every case where such notice of intended change has been given, or conferences are

being held with reference thereto, or the services of the ~~Board of Mediation~~ *Mediation Board* have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted ~~upon,~~ *upon* as required by section 5 of this Act, by the ~~Board of Mediation,~~ *Mediation Board,* unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the ~~Board of Mediation~~ *Mediation Board.*

ARBITRATION

SEC. 7. First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the preceding sections, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however,* That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise.

Second. Such board of arbitration shall be chosen in the following manner:

(a) In the case of a board of three the carrier or carriers and the representatives of the employees, parties, respectively, to the agreement to arbitrate, shall each name one arbitrator; the two arbitrators thus chosen shall select a third arbitrator. If the

arbitrators chosen by the parties shall fail to name the third arbitrator within five days after their first meeting, such third arbitrator shall be named by the ~~Board of Mediation~~ *Mediation Board.*

(b) In the case of a board of six the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name two arbitrators; the four arbitrators thus chosen shall, by a majority vote, select the remaining two arbitrators. If the arbitrators chosen by the parties shall fail to name the two arbitrators within fifteen days after their first meeting, the said two arbitrators, or as many of them as have not been named, shall be named by the ~~Board of Mediation~~ *Mediation Board.*

Third. (a) When the arbitrators selected by the respective parties have agreed upon the remaining arbitrator or arbitrators, they shall notify the ~~Board of Mediation~~ *Mediation Board;* and, in the event of their failure to agree upon any or upon all of the necessary arbitrators within the period fixed by this Act, they shall, at the expiration of such period, notify the ~~Board of Mediation~~ *Mediation Board* of the arbitrators selected, if any, or of their failure to make or to complete such selection.

(b) The board of arbitration shall organize and select its own chairman and make all necessary rules for conducting its hearings: *Provided, however,* That the board of arbitration shall be bound to give the parties to the controversy a full and fair hearing, which shall include an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel, or by other representative as they may respectively elect.

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(c) Upon notice from the ~~Board of Mediation~~ *Mediation Board* that the parties, or either party, to an arbitration desire the reconvening of the board of arbitration (or a subcommittee of such board of arbitration appointed for such purpose pursuant to the agreement to arbitrate) to pass upon any controversy over the meaning or application of their award, the board, or its subcommittee, shall at once reconvene. No question other than, or in addition to, the questions relating to the meaning or application of the award, submitted by the party or parties in writing, shall be considered by the reconvened board of arbitration or its subcommittee.

Such rulings shall be acknowledged by such board or subcommittee thereof in the same manner, and filed in the same district court clerk's office, as the original award and become a part thereof.

(d) No arbitrator, except those chosen by the ~~Board of Mediation~~ *Mediation Board*, shall be incompetent to act as an arbitrator because of his interest in the controversy to be arbitrated, or because of his connection with or partiality to either of the parties to the arbitration.

(e) Each member of any board of arbitration created under the provisions of this Act named by either party to the arbitration shall be compensated by the party naming him. Each arbitrator selected by the arbitrators or named by the ~~Board of Mediation~~ *Mediation Board* shall receive from the ~~Board of Mediation~~ *Mediation Board* such compensation as the ~~Board of Mediation~~ *Mediation Board* may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, while serving as an arbitrator.

(f) The board of arbitration shall furnish a certified copy of its award to the respective parties to the controversy, and shall transmit the original, together with the papers and proceedings and a transcript of the evidence taken at the hearings, certified under the hands of at least a majority of the arbitrators, to the clerk of the district court of the United States for the district wherein the controversy arose or the arbitration is entered into, to be filed in said clerk's office as hereinafter provided. The said board shall also furnish a certified copy of its award, and the papers and proceedings, including testimony relating thereto, to the ~~Board of Mediation~~ *Mediation Board*, to be filed in its office; and in addition a certified copy of its award shall be filed in the office of the Interstate Commerce Commission: *Provided, however*, That such award shall not be construed to diminish or extinguish any of the powers or duties of the Interstate Commerce Commission, under the Interstate Commerce Act, as amended.

(g) A board of arbitration may, subject to the approval of the ~~Board of Mediation~~ *Mediation Board*, employ and fix the compensation of such assistants as it deems necessary in carrying on the arbitration proceedings. The compensation of such employees, together with their necessary traveling expenses and expenses actually incurred for subsistence, while so employed, and the necessary expenses of boards of arbitration, shall be paid by the ~~Board of Mediation~~ *Mediation Board*.

Whenever practicable, the board shall be supplied with suitable quarters in any Federal building located at its place of meeting or at any place where the board may conduct its proceedings or deliberations.

(h) All testimony before said board shall be given under oath or affirmation, and any member of the board shall have the power to administer oaths or affirmations. The board of arbitration, or any member thereof, shall have the power to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the board of arbitration material to a just determination of the matters submitted to its arbitration, and may for that purpose request the clerk of the district court of the United States for the district wherein said arbitration is being conducted to issue the necessary subpoenas, and upon such request the said clerk or his duly authorized deputy shall be, and he hereby is, authorized, and it shall be his duty, to issue such subpoenas. In the event of the failure of any person to comply with any such subpoena, or in the event of the contumacy of any witness appearing before the board of arbitration, the board may invoke the aid of the United States courts to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements, and documents to the same extent and under the same conditions and penalties as provided for in the Act to regulate commerce approved February 4, 1887, and the amendments thereto.

Any witness appearing before a board of arbitration shall receive the same fees and mileage as witnesses in courts of the United States, to be paid by the party securing the subpoena.

SEC. 8. Approved May 20, 1926. The agreement to arbitrate—

(a) Shall be in writing;

(b) Shall stipulate that the arbitration is had under the provisions of this Act;

(c) Shall state whether the board of arbitration is to consist of three or of six members;

(d) Shall be signed by the duly accredited representatives of the carrier or carriers and the employees, parties respectively to the agreement to arbitrate, and shall be acknowledged by said parties before a notary public, the clerk of a district court or circuit court of appeals of the United States, or before a member of the ~~Board of Mediation~~ *Mediation Board*, and, when so acknowledged, shall be filed in the office of the ~~Board of Mediation~~ *Mediation Board;*

(e) Shall state specifically the questions to be submitted to the said board for decision; and that, in its award or awards, the said board shall confine itself strictly to decisions as to the questions so specifically submitted to it;

(f) Shall provide that the questions, or any one or more of them, submitted by the parties to the board of arbitration may be withdrawn from arbitration on notice to that effect signed by the duly accredited representatives of all the parties and served on the board of arbitration;

(g) Shall stipulate that the signatures of a majority of said board of arbitration affixed to their award shall be competent to constitute a valid and binding award;

(h) Shall fix a period from the date of the appointment of the arbitrator or arbitrators necessary to complete the board (as provided for in the agreement) within which the said board shall commence its hearings;

(i) Shall fix a period from the beginning of the hearings within which the said board shall make and file its award: *Provided,* That the parties may agree at any time upon an extension of this period;

(j) Shall provide for the date from which the award shall become effective and shall fix the period during which the award shall continue in force;

(k) Shall provide that the award of the board of arbitration and the evidence of the proceedings before the board relating thereto, when certified under the hands of at least a majority of the arbitrators, shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arose or the arbitration was entered into, which district shall be designated in the agreement; and, when so filed, such award and proceedings shall constitute the full and complete record of the arbitration;

(l) Shall provide that the award, when so filed, shall be final and conclusive upon the parties as to the facts determined by said award and as to the merits of the controversy decided;

(m) Shall provide that any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board, or, by agreement, to a subcommittee of such board; and that such ruling, when acknowledged in the same manner, and filed in the same district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award; and

(n) Shall provide that the respective parties to the award will each faithfully execute the same.

The said agreement to arbitrate, when properly signed and acknowledged as herein provided, shall not be revoked by a party to such agreement: *Provided, however,* That such agreement to arbitrate may at any time be revoked and canceled by the written agreement of both parties, signed by their duly accredited representatives, and (if no board of arbitration has yet been constituted under the agreement) delivered to the ~~Board of Mediation~~ *Mediation Board* or any member thereof; or, if the board of arbitration has been constituted as provided by this Act, delivered to such board of arbitration.

Sec. 8. Approved June 21, 1934. If any section, subsection, sentence, clause, or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed.

SEC. 9. First. The award of a board of arbitration, having been acknowledged as herein provided, shall be filed in the clerk's office of the district court designated in the agreement to arbitrate.

Second. An award acknowledged and filed as herein provided shall be conclusive on the parties as to the merits and facts of the controversy submitted to arbitration, and unless, within ten days after the filing of the award, a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment on the award, which judgment shall be final and conclusive on the parties.

Third. Such petition for the impeachment or contesting of any award so filed shall be entertained

by the court only on one or more of the following grounds:

(a) That the award plainly does not conform to the substantive requirements laid down by this Act for such awards, or that the proceedings were not substantially in conformity with this Act;

(b) That the award does not conform, nor confine itself, to the stipulations of the agreement to arbitrate; or

(c) That a member of the board of arbitration rendering the award was guilty of fraud or corruption; or that a party to the arbitration practiced fraud or corruption which fraud or corruption affected the result of the arbitration: *Provided, however,* That no court shall entertain any such petition on the ground that an award is invalid for uncertainty; in such case the proper remedy shall be a submission of such award to a reconvened board, or subcommittee thereof, for interpretation, as provided by this Act: *Provided further,* That an award contested as herein provided shall be construed liberally by the court, with a view to favoring its validity, and that no award shall be set aside for trivial irregularity or clerical error, going only to form and not to substance.

Fourth. If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity, but shall determine that a part of the award is valid, the court shall set aside the entire award: *Provided, however,* That, if the parties shall agree thereto, and if such valid and invalid parts are separable, the court shall set aside the invalid part, and order judgment to stand as to the valid part.

Fifth. At the expiration of ten days from the decision of the district court upon the petition filed as aforesaid, final judgment shall be entered in accordance with said decision, unless during said ten days either party shall appeal therefrom to the circuit court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said petition and to be decided.

Sixth. The determination of said circuit court of appeals upon said questions shall be final, and, being certified by the clerk thereof to said district court, judgment pursuant thereto shall thereupon be entered by said district court.

Seventh. If the petitioner's contentions are finally sustained, judgment shall be entered setting aside the award in whole or, if the parties so agree, in part; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award.

Eighth. Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor or service by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

EMERGENCY BOARD

SEC. 10. If a dispute between a carrier and its employees be not adjusted under the foregoing pro-

visions of this Act and should, in the judgment of the ~~Board of Mediation~~ *Mediation Board,* threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the ~~Board of Mediation~~ *Mediation Board* shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however,* That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

There is hereby authorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensation and the necessary traveling expenses and expenses actually incurred for subsistence, of the members of the board. All expenditures of the board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

GENERAL PROVISIONS

SEC. 11. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

SEC. 12. There is hereby authorized to be appropriated such sums as may be necessary for expenditure by the ~~Board of Mediation~~ *Mediation Board* in carrying out the provisions of this Act.

SEC. 13. (a) Paragraph "Second" of subdivision (b) of section 128 of the Judicial Code, as amended, is amended to read as follows:

"Second. To review decisions of the district courts, under section 9 of the Railway Labor Act."

(b) Section 2 of the Act entitled "An Act to amend the Judicial Code, and to further define the jurisdiction of the circuit court of appeals and of the Supreme Court, and for other purposes," approved February 13, 1925, is amended to read as follows:

"SEC. 2. That cases in a circuit court of appeals under section 9 of the Railway Labor Act; under section 5 of 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved September 26, 1914; and under section 11 of 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, are included among the cases to which sections 239 and 240 of the Judicial Code shall apply."

SEC. 14. Title III of the Transportation Act, 1920, and the Act approved July 15, 1913, providing

for mediation, conciliation, and arbitration, and all Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed, except that the members, secretary, officers, employees, and agents of the Railroad Labor Board, in office upon the date of the passage of this Act, shall receive their salaries for a period of 30 days from such date, in the same manner as though this Act had not been passed.

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